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Why the problem, and the solution, are bigger than you think

BY JAMES K. GALBRAITH

PLUS: Why Washington should take over the auto industry

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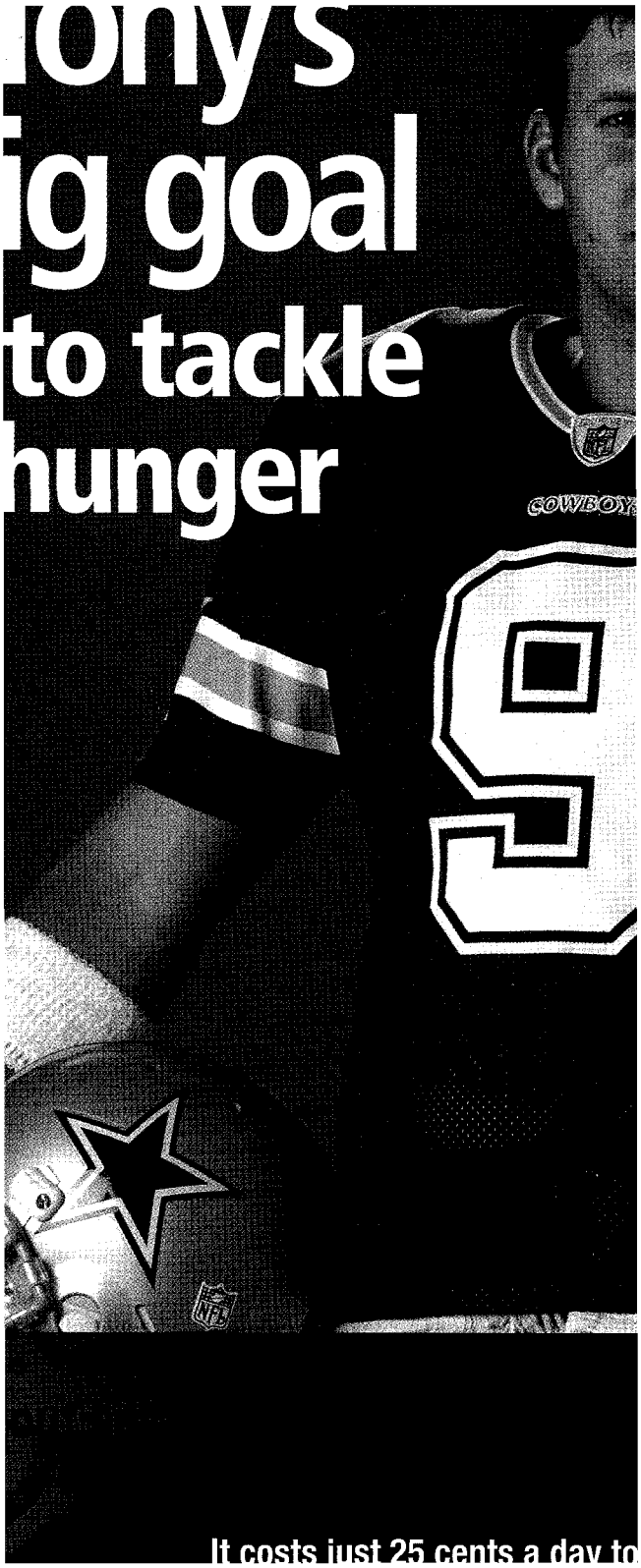

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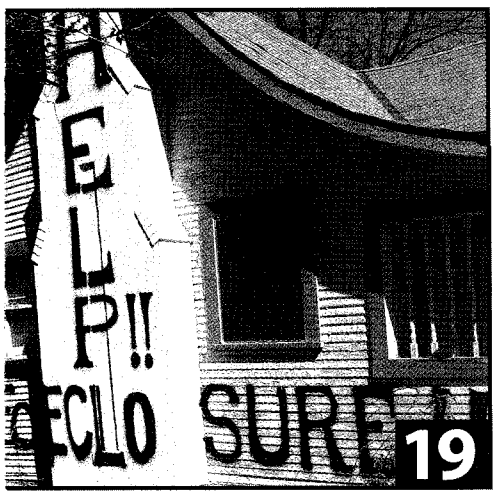

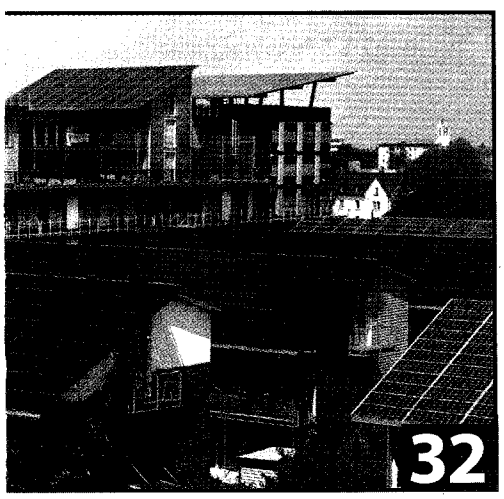

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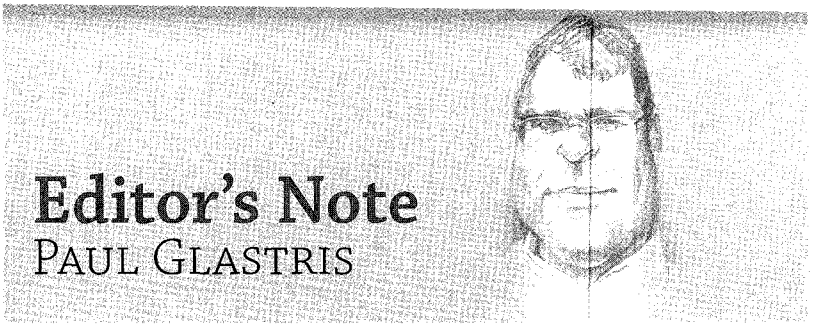

The Capacity of Hope

In his masterful address before Congress on February 23, Barack Obama summoned "an America that does not quit." His words inspired a great deal of hope. But they were also premised on a great deal of hope. The president predicts that the stimulus package will revive the economy by next year. He expresses confidence that moribund banks can be reinvigorated and kept in private hands with further injections of government capital and a public-private partnership to buy up toxic assets. He believes his economic team can use the leverage of federal loans to force U.S. auto companies to make enough reforms to keep the industry and its vital chain of suppliers alive.

These are worthy aspirations, and I fervently hope he can accomplish them. But I also hope he is considering what happens if he can't.

In this issue's cover story (page 19), economist James K. Galbraith provides a darker picture of what's in store. He begins by questioning an assumption held by nearly all modern economists, including those around Obama: that economies are naturally self-stabilizing, and therefore that economic slumps can be righted with relatively modest, short-term nudges from government. That idea fits the experience of every postwar recession. But what if the current crisis is less like those downturns and more like the Great Depression, when the economy famously failed to return to normal? In that case, the actions that official Washington has taken are bound to be woefully inadequate to the challenge.

If Galbraith is right—and I fear he is—it means that tens of millions more Americans will be out of work in a year or two or five, even if the stimulus creates all the jobs the president expects. It means that the big banks really are "zombies" that will neither resume normal lending nor grow their way out of insolvency regardless of how much money the Treasury pours into them. It means that the auto companies will burn through every dime the government lends them and still not turn a profit.

And it means that the federal government will face some stark choices: put millions of Americans on the dole, or give them government jobs. Place half the nation's big banks into federal receivership, or face financial Armageddon. Let the domestic auto industry go bankrupt, or take it over, too.

These are choices that most elected officials can hardly bring themselves to contemplate, for understandable reasons. Even many liberals would have serious doubts about government controlling so directly what has traditionally been the domain of the private sector.

Yet the truth is that the government has a surprisingly impressive record of stepping into that domain during emergencies. The Federal Deposit Insurance Corporation routinely takes over insolvent banks and turns them around. If the FDIC is too small to manage the reconstitution of so many Wall Street behemoths, as critics suggest, then Washington could build new agencies to handle the task, as it did during the savings and loan crisis when it created the (quite effective) Resolution Trust Corporation. Attracting talent shouldn't be a problem. There are plenty of unemployed Wall Street bankers looking for meaningful work, not all of them tainted by scandal.

Running insolvent banks is at least in Washington's "wheelhouse," as the consultants like to say. But a government takeover of the automobile industry? Certainly that would be a disaster, right? Well, consider the tale Phillip Longman tells of another major transportation enterprise that went into federal receivership (page 14). In 1976 Washington took over Penn Central and five other bankrupt railroads and folded them into a government-sponsored entity, Conrail. New management was recruited, federal dollars pumped in, major structural reforms instituted. A decade later, a thriving Conrail was sold off in what was, at the time, the largest IPO in U.S. history. A fluke? Hardly. During World War I, Woodrow Wilson put the entire railroad industry under government control, and later placed it back in private hands in much better shape than when he got it.

Stories like these don't fit the paradigm that most of us, after listening to antigovernment conservatives for thirty years, have in our heads about what government can and cannot do. But as Charles Peters notes in Tilting at Windmills (page 6), there are plenty of such stories. In November 1933, FDR directed his relief administrator Harry Hopkins to start a new agency, the Civil Works Administration, to provide useful government jobs to the unemployed. Four months later, Hopkins had four million Americans on CWA's payroll. And he managed the whole operation with nary a hint of scandal.

Like most Americans, I would much rather see Barack Obama lead this country out of recession in the next year and avoid having the government take over key industries or create millions of public-sector jobs. But he, and we, should know that if necessary, government has the capacity to do these things, and do them well. That, to me, is a real source of hope. WM

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Railroaded

Thank you for Phillip Longman's excellent article "Back on Tracks" [January/February 2009]. The case for investment in electrically powered freight-hauling railroad infrastructure could not have been put better.

Those of us who have had the pleasure of traveling on modern passenger rail systems like France's high-speed TGV would probably argue that investment in freight rail would provide the perfect opportunity to give the United States a strong passenger rail system as well. Mr. Longman apparently sees passenger rail service as irretrievably "money losing," and he is inarguably correct that our historical experience in the U.S. supports that prediction. But need it forever be so?

Dr. Lewis Jacobson
Professor of Biological Sciences
University of Pittsburgh
Pittsburgh, Penn.

While railroads are the most energy-efficient form of transportation ever invented, there are problems with some of Phillip Longman's proposals [in "Back on Tracks"]. For several years, not too long ago, mail *was* carried on Amtrak lines, mostly in roadrailers tacked on to the ends of the trains. It seemed a good idea at the time, but the results were miserable, pushing the trains even further behind schedule than they already were. Obviously, mail-by-rail could be made to work as well as it once did, but either there would have to be dedicated mail trains or a significantly higher traffic density on our passenger trains. At one time, Amtrak also carried express freight. That didn't turn out too well either.

Longman also fails to tell the whole story of the hostility between the government and the railroads. In the mid-nineteenth century the federal government decided it was in the national interest to have transcontinental railroads, and began a program of giving away alternating sections of land (with the railroads having to buy the rest at fair market value) along proposed alignments, and otherwise subsidizing construction. But for most of the twentieth century, if the federal government got involved with the railroads, it was almost always to slap on another unfunded mandate. So it's understandable that the railroads get suspicious whenever the federal government gets involved.

James H. H. Lampert
Fountain Valley, Calif.

In "Back on Tracks," Phillip Longman implies that government ownership or corporate ownership are the only possible ways that railroads can be run. There is a third, untried alternative: public, cooperative-style ownership.

Imagine a rail system (either a single national system or, perhaps, a number of regional systems) that is owned and operated by a board of trustees, directly elected by and responsible to the public. Such a system would avoid the worst of both worlds. It would avoid the inevitable bureaucratic incompetence and political interference that comes with government ownership, and it would avoid the short-term profiteering and capital starvation that has been the case under private ownership. That is exactly what the U.S. needs.

Stefan Stackhouse
Black Mountain, N.C.

The illustration of tragedy at the start of the article "Back on Tracks" provides an unfair commentary on the trucking industry. While the incident illustrated in the article was an unfortunate event, it by no means provides an accurate depiction of what actually occurs on the road. Studies show that approximately 70 percent of the fatal crashes involving trucks and passenger vehicles were initiated by the drivers of the passenger vehicles, and that heavy-vehicle-initiated incidents with stopped vehicles accounted for only 12 percent of all recorded accidents. Through more stringent safety regulations implemented with new programs and technologies, the trucking industry is the safest it has ever been since the Department of Transportation began keeping a record of fatal traffic crashes in 1975.

The article also significantly overestimates the ability of railroads to replace trucks as the more practical and preferred method for shipping. The trucking industry was born out of necessity. As our sprawling nation moved away from central hubs, railroads could no longer provide the service our nation required. Now, 80 percent of communities do not even have access to rail lines, and trucks are the preferred mode for moving nearly all consumer goods and about 70 percent of overall freight tonnage in the United States. Freight rail may be competitive with trucks on deliveries over 750 miles, but only 8.6 percent of total freight tonnage moves that far. Even freight movements over 500 miles comprise only 13.8 percent of the market.

While a primary argument made for shifting goods to rails is the ability to remove trucks from the road, the article fails to consider that an increased focus on railroads would actually create an even greater need for trucks. Without a strong network of trucks to rely on for moving all goods to and from rail terminals, the railroads would be ineffective and rendered relatively helpless.

Railroads are an important part of our nation's transportation system, but the whimsical idea of a railroad renais-

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sance that would bring us back to a "simpler time" simply cannot happen.

Clayton Boyce
Vice President of Public Affairs
American Trucking Associations
Arlington, Va.

Phillip Longman replies:
It is hard to fathom why the American Trucking Associations would object that an "increased focus on railroads would actually create an even greater need for trucks." If so, why would that be a problem for truckers? In point of fact, the intermodel system I describe would leave truckers with plenty to do, from making local pickups and deliveries to hauling containers traveling greater distances to and from local railheads. The big difference would be that more truckers could sleep in their own beds at night, and without having to worry so much about being killed out on the Interstate by those reckless auto drivers.

To check or not to check

T. A. Frank's assertion ["The Little Unions That Couldn't," January/February 2009] that allowing workers to decide whether to hold a union representation election or proceed directly to negotiations (i.e., "card check") with the employer is *not*, as he writes, a "substantively minor" part of the Employee Free Choice Act. It is a core component of the act, restoring to workers the right to decide, and limiting the power of the employer and its agents to coerce and intimidate.

In asserting the centrality of card check, one could raise the simple moral question of why it should be the employer's choice (as it is now) to force an election or choose to recognize the workers' union based on a majority showing of preference for union representation. After all, under the original National Labor Relations Act it is supposed to be the employee's choice, and the employer is supposed to stay out of it. While that right to choose has been inverted in most workplaces over the intervening years, workers retain the right in the construction industry. Why shouldn't service and manufacturing workers enjoy the same rights? On a practical level, too, Frank is wrong, because expedited elections will simply lead to expedited firings. An election can never be quicker than a firing. It only takes a minute to fire someone.

While the ILWU struggle with Rite Aid is a good example of the failure of current law, if Frank had spoken to other organizers he would have learned that the hurricane of employer fury, intimidation, and coercion is generally launched at the first sign of worker organizing and not simply when an election petition is filed. Most organizing unions counsel workers not to sign cards until the penultimate moment, knowing that once word of the authorization cards spreads in the workplace the employer's attack will surely begin. So, by the time cards are signed, workers generally have been subjected to anti-union propaganda and employer intimidation.

If employers know that card signing is guaranteed to result in a quick election, they will have an incentive to fire union supporters even more quickly, so as to make manifest their hostility to the union and preempt an election victory by the union. On the other hand, if the employer knows that simply a majority showing makes union representation and a contract inevitable, then the incentive is to establish civilized relations and a fair bargaining relationship as quickly as possible.

Ray Scannell
Bakery, Confectionery, Tobacco Workers,
and Grain Millers International Union
Kensington, Md.

T. A. Frank replies:
I appreciate Mr. Scannell's points, and I agree with him that card check is legitimate as a policy goal and that the "right to choose has been inverted" over the years (I say as much in my article). But I don't follow his overall argument. Mr. Scannell rejects the idea of substituting card check with expedited elections, asserting that "expedited elections will simply lead to expedited firings." But why would that necessarily be the case? Remember: even without card check, the penalties for illegal firings would increase by three times, and the fines for illegal intimidation would go up to $20,000.

Now, it could be that Mr. Scannell finds such remedies insufficient, but he doesn't mention them, and surely any rejection of expedited elections must take those remedies into account. Again, EFCA would enact many new provisions to protect workers from employer misbehavior, and allowing any one provision of the act to dominate the discussion risks making us lose sight of the bigger picture.

Not so teachable

A Teachable Moment" [Charles Peters, "Tilting at Windmills," January/February 2009] once again blows the same tired old smoke that all we need to do is hire and reward teachers based upon subject knowledge and teaching ability. Trying to get highly qualified, intelligent teachers to ply their trade in schools with high student populations consisting of unruly, uninterested, undisciplined individuals, and expecting to retain them, is a delusion. Peters points out that Teach for America has had great success in bringing bright young teachers into the public schools—well, guess what? These bright young teachers don't stay long. They get burned out and leave.

Recruiting and rewarding good teachers monetarily isn't a silver bullet. Teachers need to have a lot more authority in controlling their educational environment. They need to be able to have significant clout in controlling class size, the type of student admitted into their class, and the ability to dismiss those students who come to class with only one purpose: to create chaos. Teachers, as any other truly professional group, need to have the authority to make things better. Today, as in the past, they don't.

Wayne Bernal
Retired science and math teacher
Crown Point, Ind.

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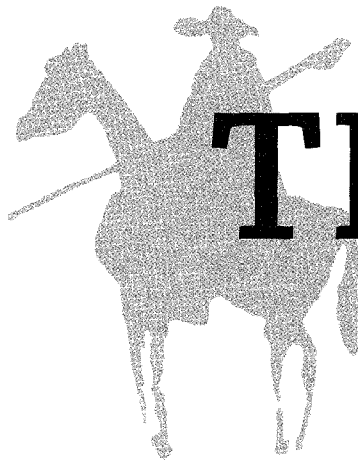

TILTING *at windmills*

By Charles Peters

The only thing we have to fear is fear of big government

Obama's stimulus promises to create or save three to four million jobs in the next two years. In the fall of 1933, a New Deal program created four million jobs in two months.

Timothy Noah and I described the miracle of the Civil Works Administration in a recent article in *Slate* ("Wrong Harry," January 26). The CWA was the brainchild of Harry Hopkins, who received FDR's blessing for the idea in mid-November. By mid-December, he had employed two million people, and by mid-January four million.

Hopkins had two secrets that seem not to be understood by the Obama team. First, he put the new workers on the federal payroll, while Obama says that 90 percent of his jobs will be in the private sector. And instead of dotting every *i* and crossing every *t* to ensure accountability before workers were hired, Hopkins risked mistakes by moving fast. He still got accountability, however, by sending experienced journalists to visit his projects in the field in order to give him quick feedback. This enabled the CWA to fix its problems fast. In New York City, for example, a chaotic program became a showcase in just a couple of months.

Hopkins had seen how another program, run along the same lines as Obama's stimulus plan, had moved much too glacially to meet the desperate needs of 1933. That program, the Public Works Administration, was designed to work through private contractors, and took care to dot every *i* and cross every *t* to avoid any scandal. The PWA would ultimately do great good. But by the fall of 1933, it had barely put a hundred thousand people to work.

The presiden't stimulus bill requires "fixed-price" contracts. They usually take six months to negotiate. And Obama's desire to scandal-proof the process would seem likely to take even longer.

> Obama should learn from Roosevelt's experience, and not let himself be paralyzed by fear of Republican attack. If putting the country back to work means putting more people on the government payroll, then so be it.

Of course, the bill has a "use it or lose it within 120 days" provision, but all that guarantees is a lot of pleas for extensions or contracts that are not signed, meaning work is actually not begun, until day 119. That's why I hope he will consider Harry Hopkins's approach. Remember, Hopkins did not say, "Damn the torpedoes, full speed ahead." What he did say was, "Full speed ahead, but watch out for the torpedoes and change course when necessary."

When Obama boasts that 90 percent of the stimulus jobs will be in the private sector, and Timothy Geithner speaks disparagingly of government's ability to run an enterprise, they display the old Democratic fear of being stuck with a big-government label by the Republicans.

This, of course, is understandable. Every *Wall Street Journal* op-ed page seems to feature pieces like the recent "Beware of the Big-Government Tipping Point" by Peter Wehner and Paul Ryan. Similar sentiments are a constant refrain of Republican oratory in Congress, and on conservative talk shows.

And the fear is not new. Indeed, Franklin Roosevelt was so frightened by the risk he had taken that he canceled the CWA as the summer of 1934 approached and the congressional election campaign got under way. But once the Democrats won a great victory in that election, Roosevelt relaunched his CWA, rechristened as the Works Progress Administration, and provided jobs for more than eight million Americans.

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Obama should learn from Roosevelt's experience, and not let himself be paralyzed by fear of Republican attack. If putting the country back to work means putting more people on the government payroll, then so be it. When jobs like teaching Head Start, repairing roads, and cleaning up the environment can be filled more quickly by hiring people directly instead of by contract, Obama should not hesitate to have the government do the hiring. Nor should he hesitate to face the need of many government agencies for more employees.

Congressional conservatives have starved the budget of any agency that threatens effective regulation of the private sector. News of one outrage after another reminds us of the need for more and better government employees to protect the economy from the abuses of Wall Street, to guard the safety of food and drugs, to prevent defective products from reaching the marketplace, to keep the environment from being contaminated, to make sure that disease is effectively controlled, and to guarantee that workers are being provided with decent working conditions and fair compensation.

Government needs don't stop there. AmeriCorps needs more volunteers. The U.S. Army needs at least a hundred thousand additional troops to relieve the strain Iraq and Afghanistan have imposed on far too many soldiers, who are now enduring their third or fourth combat tours.

To be sure, more government is not always the answer, and some government agencies are just plain bad. Constant criticism of the bureaucracy is necessary—indeed, such criticism has been a staple of this magazine since its inception—to keep government on its toes. But government *can* work—even agencies that have been bad can become good, and sometimes very quickly. Consider the contrast between the U.S. Navy's performance at Pearl Harbor in December 1941 and at Midway in June 1942. The reverse is also possible—the U.S. Army's performance in Iraq went from the sixty days of triumph of its conquest of Saddam Hussein's forces to four years of failure in the occupation—and then back to relative success in the past year. Or take the Federal Emergency Management Agency—not so good in 1992, getting better from 1993 to 2001 under James Lee Witt, and then becoming much worse under Brownie.

A few agencies stay effective for long periods, most notably the U.S. Postal Service through the 1930s, '40s, and '50s. Throughout my forty-eight years in Washington, the Office of Management and Budget has maintained a very high level of competence among its staff, even though its political leadership has misused it from time to time. Also, for various but fairly lengthy periods, the Internal Revenue Service, the Federal Trade Commission, some divisions of the Department of Justice, and even, for a while in the past, the Securities and Exchange Commission have all established traditions of excellence.

New agencies like the CWA tend to perform the best. They attract people dedicated to their mission, instead of those just looking for a job. Because they are usually designed to meet an immediate need, they impart a sense of drama and urgency to their workers. Bad bureaucratic habits have not had time to establish themselves. As a participant in the birth of the Peace Corps, I remember that, instead of the long meetings and lengthy memoranda that make boredom and inaction so characteristic of too many mature agencies, decisions were often made by quick phone calls and informal gatherings in the hallways.

So I urge Obama to not only refuse to be afraid of adding employees to the government, but not to fear starting new agencies. Franklin Roosevelt was constantly criticized for his alphabet soup of agencies—e.g., the CWA, the PWA, and the WPA. But they made the New Deal work and won World War II. Forget the Republican propaganda that the New Deal didn't work; between 1933 and 1940, it cut unemployment by more than half by all estimates, and by more than two-thirds according to many. And don't let them kid you that the New Deal was a failure saved only by World War II. Military spending did not increase until the second half of 1940, and by then wages had increased by 25 percent in just the preceding year in the state of West Virginia alone.

Can I take your coat for $1,000?

We've all heard about the World Economic Forum's gathering of the global financial and corporate elite in Davos, Switzerland, every winter, but if you're like me, you're more than a little vague about the details. For instance, could you or I attend? The answer is yes, if we have $16,000 to pay for a ticket, or $37,000 if we want a corporate membership. If you want a private meeting with "industry leaders," the tab gets steeper—in fact, it rises to $220,000. And if you want to be a "co-chair" of the meeting, according to Eduardo Porter of the *New York Times*, to whom I'm indebted for these details, you must part with $435,000.

> The Fourth Circuit Court of Appeals' opinions often seem to have been written by Rush Limbaugh. Obama has an opportunity to turn the court into a bastion of liberalism instead.

But, after all, you will be exposed to such insights from world leaders as this from Tony Blair: "If we are interconnected and the world is interconnected, the only way for the world to work is to have a set of common values. We have no option but to work together."

I know you'll need time to ponder this profundity, but I must proceed to the next item.

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People who live in HUD-funded glass houses ...

Senator Tom Coburn, a conservative Republican, recently expressed shock that one in five of the jobs produced by the stimulus plan will be government jobs. But he got his comeuppance from Steve Pearlstein, a financial columnist for the *Washington Post*, who points out that one in five jobs in Coburn's home state of Oklahoma is a government job, too. Somehow, I can't imagine Coburn's zeal for fiscal discipline extending to eliminating 20 percent of Oklahomans' jobs.

The unbearable possibility of life without a chauffeur

"*You* try to live on $500K in this town," challenges a recent headline in the *New York Times* Style section. Among the essential expenses that would be threatened by Obama's proposed limit on top Wall Street salaries: a nanny, at $45,000 a year; a chauffeur, at between $75,000 and $125,000; a personal trainer, at $12,000; one vacation in the sun and another on the ski slopes, at $16,000; and for the women, three party dresses at $35,000. And how can we expect anyone to give up that summer home in South Hampton, with its annual mortgage payment of $240,000?

> In a time when state governments are struggling to maintain essential services, here's a way for them to make major savings: release nonviolent inmates from prison.

Remember the henhouse, Mr. President

I've been troubled by two of Obama's regulatory appointees, whose records suggest excessive solicitude to the institutions they are to regulate. The previous job of Mary Schapiro, Obama's choice to head the Securities and Exchange Commission, was head of the Financial Industry Regulatory Authority (FINRA), a private agency established by Wall Street to regulate itself. In that job, according to the *Wall Street Journal*, she "missed the mortgage crisis and Bernard Madoff's alleged $50 billion Ponzi scheme."

And Gary Gensler, Obama's appointee to head the Commodity Futures Trading Corporation, according to Harold Meyerson's column in the *Washington Post*, "drafted the legislation in 2000 that exempted derivatives, including credit-default swaps, from regulation."

It seems ironic that in choosing Gensler, Obama ignored the chance to reappoint Brooksley Born, who as chair of the CFTC in 1998 had the foresight to recommend the regulation of derivatives, only to have her proposal squelched by Alan Greenspan's Federal Reserve and Bill Clinton's SEC and Treasury Department.

I carp because I care

This column is so full of criticism of the Obama administration that I fear some readers will get the impression that I've turned against him. I have not. I still think he has the potential to be one of the truly great presidents in American history.

What I remind myself of now is the liberal critics of the New Deal whose articles I read as I was growing up. They were constantly trying to nudge FDR back onto the true path from which they feared he either was straying or might stray. But when campaign time rolled around, they would become virtual propagandists for Roosevelt, until they were sure he was safely reelected. So I knew that their criticism came from love, and the desperate desire for him to succeed.

Setting an example

One good deed for which I have not seen Obama get any credit is the freeze he placed on the pay of the top White House staff on his first day in office. It seems to me that those who complain about Obama's $500,000 ceiling on top Wall Streeters should acknowledge that that's still more than the president himself is making, and roughly three times what senior White House staffers make.

Some appealing news

There are now sixteen vacancies on the Federal Circuit Courts of Appeal. By blessed coincidence, four of them are on the Fourth Circuit, whose opinions since the Reagan era have often seemed to have been written by Rush Limbaugh. Because of recent retirement of Republicans from the court, their margin over Democrats is only six to five. Thus Obama could actually turn it into a bastion of liberalism. This is important because circuit courts, not the United States Supreme Court, make the final decisions in the vast majority of cases that are appealed.

Ayatollah? Is that like hummus?

The political views of Reuel Marc Gerecht, a former Central Intelligence Agency official, are more conservative than mine, but his knowledge of the inner workings of the CIA and feel for its culture make him worth listening to. Recently, he wrote an op-ed for the *Washington Post* lamenting the CIA's history of incompetence in Iran. I knew about the agency's failure to report the longstanding hostility to the shah on the part of the great majority of Iranians. I had heard about it from Peace Corps volunteers as early as 1964, but the CIA didn't seem to have a clue until fifteen years later. Gerecht says that as far as he knows, the situation has not improved. As an example, he tells of seeing "a case officer who barely spoke Farsi debrief a potentially high-value Iranian official who barely spoke English."

Gerecht points out that Iran is probably the "easiest" of the hard targets that the CIA has, because of the many travelers who enter Iran every day and the many Iranians who go abroad. But, he

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worries, "I'm not aware of one instance since 1978 ... that an American president requested a thorough assessment" of the CIA's efforts in Iran. Let's hope Obama quickly becomes an exception.

When we spend peanuts on regulation

To me the most shocking fact about the recent peanut scandal is that neither federal nor state regulators require a company to notify the public or the government if it finds salmonella contamination.

And if you doubt the need for more government employees in our regulatory agencies, consider the fact that the FDA had only enough inspectors to check less than one out of every twelve food plants in 2008.

Hush money

The latest evidence that the drug industry's dedication to the public interest remains firmly under control: the stimulus bill provided $1 billion to support research comparing the efficacy of different medical treatments. But, reports the *Wall Street Journal*'s Alicia Mundy, the drug and medical device industry lobbied to gut the provision, "portraying it as the first step to government rationing." Why are they afraid of the public finding out which treatments are the most effective and the least expensive?

Solvay Pharmaceuticals, according to a suit filed by the Federal Trade Commission, has bribed other drugmakers not to manufacture a cheaper generic version of one of Solvay's drugs. What I found most disturbing in Lyndsey Layton's story in the *Washington Post* describing the suit was this sentence: "The FTC found that nearly half of all settlements between generic drugmakers and brand-name manufacturers in fiscal 2006 and 2007 resulted in some kind of payment to the generic maker in exchange for a pledge to stay out of the marketplace."

Can the DOE do it?

The new stimulus plan assigns roughly $40 billion to the Department of Energy, including money for loans and contracts. The DOE's loan guarantee office "has yet to approve a single project," according to the *Wall Street Journal*, "since the loan program launched in early 2007." And according to the Government Accountability Office, the "DOE's record of inadequate management and oversight of its contractors has resulted in the high-risk designation" that the GAO awards to programs it deems "at high risk for waste, fraud, abuse, and mismanagement."

Freedom is cheaper than the alternative

In a time when state governments are struggling to maintain essential services, here's a way for them to make major savings: release nonviolent inmates from prison. The nonviolent constitute a majority of prisoners, yet many of them are serving time for minor offenses, and they pose no danger to the public. To be sure, we would have to exercise greater care with our wallets and pocketbooks, and be sure to lock our house and car doors. But the inconvenience seems minor compared to the potential savings.

Virginia is presently considering just such a release program. A proponent, state Senator Janet Howell, tells the *Washington Post*'s Tim Craig: "In talking to my constituents, they are not interested in spending $25,000 a year to incarcerate these people when we are talking about cutting higher education, public education and health care."

Nonprofit and nonhelpful

Nonprofit hospitals receive an estimated $12.6 billion in annual tax exemptions. Most of us would assume the nonprofit status would have something to do with community service. But an IRS survey, reported by the *Wall Street Journal*, has found that less than one-fifth of hospitals provide 78 percent of the community benefit expenditures, most notably in the form of charity care. So why are the other guys getting away with calling themselves nonprofits?

Who goes postal?

I have long been fascinated by the contrast between jobs in the Postal Service. Letter carriers usually come across as nice people who seem happy going about their work. By contrast, those who work inside post offices often seem surly and unhappy.

Florence Cooke, who is retiring after thirty-one years delivering mail on a rural route in Virginia, told Holly Prestidge of the *Richmond Times-Dispatch*, "I have loved my job all these years. I have really nice people on both routes. I've gone through a whole lot with all of them. The good times, the bad times, when they've lost family members ... I know when the garden is coming up. I know when [a homeowner] painted the house. I know when the house goes up for sale."

> The *New York Times* lists as the necessary living expenses of Wall Street executives a personal trainer at $12,000, a nanny at $45,000, and a chauffeur at $75,000.

Why is delivering the mail so satisfying compared to working inside the post office? I suspect it is because no one is looking over your shoulder. You still have to meet the goal of completing your route each day. But it's up to you how you do it: when you want to stop and chat, or just take time to sit down for a while. It's your choice, not a supervisor's. WM

Charles Peters is the founding editor of the *Washington Monthly*.

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Green Zone on the Green Line

The Department of Homeland Security goes house hunting in one of Washington's most troubled neighborhoods.

By Matthew Blake

When the U.S. Office of Personnel Management surveyed the job satisfaction of the federal workforce in 2008, the Department of Homeland Security ranked at or near the bottom in nearly every category. It was another dubious distinction for the department, which had launched with much fanfare in the wake of the September 11 terrorist attacks, the largest overhaul of the federal bureaucracy since Harry Truman created the Department of Defense. But DHS was the kind of sweeping but light-on-the-details gesture at which the Bush administration excelled, gathering twenty-two agencies with often unrelated missions—from fighting terrorism to issuing green cards to inspecting fishing boats' safety gear—under a single roof. It was a recipe for bureaucratic dysfunction, not least because the department didn't actually *have* a single roof; its member agencies were scattered among seventy different buildings in forty discrete Beltway locations.

Unlike the new department's other institutional pathologies, this problem seemed like it wouldn't be that difficult to solve. But where do you find the real estate to house 14,000 employees within the already cramped confines of the District of Columbia? Pentagon-sized plots of land aren't exactly easy to come by. In the fall of 2005, following DHS's botched response to Hurricane Katrina, then Homeland Security Secretary Michael Chertoff ratcheted up his pleas to the General Services Administration, the federal government's landlord, to find them a home. The GSA bureaucrats came back with an idea. For decades, the federal government had been trying to find a use for St. Elizabeth's Hospital, a century-and-a-half-old former mental hospital in Washington's Anacostia neighborhood. It was in bad shape, but it was big enough to house the homeless Homeland Security. And the neighborhood, one of the most crime-ridden in the city, was very much in the market for development opportunities, as local City Councilman Marion Barry—the oft-disgraced former mayor of Washington and de facto mayor-for-life of Anacostia—would happily tell you.

The plan, which was approved in January, does not in its general contours appear to be the most promising arrangement in the world: move the most dysfunctional department in the federal government into the most troublesome building the government owns, in one of the District's worst neighborhoods, presided over by the city's most famously questionable politician. In fact, the only thing crazier than the idea itself is the fact that it might actually work out pretty well for everyone involved.

St. Elizabeth's is a study in isolation, fenced off and barricaded from Anacostia just as the neighborhood is re-

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moved from the rest of Washington. A short walk from the Metro's green line, the hospital is divided by Martin Luther King Jr. Avenue into a west and east campus. It is eerie in its emptiness: the drab red buildings, separated by broad swaths of dead grass, might as well be haunted houses. Except for a few people waiting for the bus down the street, the place is deserted, and seems far more apart from the world than the four miles that separate it from the Capitol suggest.

The feeling of separation is not entirely an accident. St. Elizabeth's opened in 1855, premised on the Quaker belief that the mentally ill could have meaningful lives if they were allowed to escape the rest of society. It expanded during the Civil War with its care for traumatized soldiers and was later taken over as a general "government hospital for the insane" by the Adjutant General's Office in the Department of the Interior. The grounds were a miniature walled city that eventually featured a movie theater, a library, a barber shop, a nursery school, and tennis courts. (The modernist poet Ezra Pound was among its residents, as was, many years later, would-be Reagan assassin John Hinckley.)

Through the first half of the twentieth century St. Elizabeth's coexisted with a diverse Anacostia neighborhood, but in the 1950s both the neighborhood and the hospital began a downhill slide. City planners and the Eisenhower administration decided to build the regional Interstate, I-295, through the middle of Anacostia, connecting military stations but permanently fragmenting the neighborhood. The white population, like those in other cities, fled for the suburbs, and the community began drifting away from governmental Washington. Meanwhile, St. Elizabeth's itself fell victim to the growing backlash against mass institutions for the mentally ill. By 1987, the federal government had turned over the remaining mental health facilities on the hospital's 268-acre east campus, as well as the 900 remaining patients, to the city.

The federal government continued to own the smaller west campus on the other side of MLK Avenue, but it would have preferred not to. As the sixty-two asbestos-filled brick buildings there fell further and further into disrepair, the Department of Health and Human Services (which had inherited the property from Interior) unloaded the property on the GSA. "It was reeking," says GSA spokesman Mike McGill. "There were floors collapsing, wallpaper peeling off, and light fixtures falling on the floor." And there was only so much they could do to fix the place up—historic preservationists had secured St. Elizabeth's classification as a national historic landmark, ensuring that the buildings would not be radically refurbished. "We were afraid that if it were turned over to the city it would be bulldozed for apartment buildings," says Richard Longstreth, a professor of American studies at George Washington University and director of the graduate program in historic preservation there.

The plan involves moving the most dysfunctional department in the federal government into the most troublesome building the government owns, in one of the District's worst neighborhoods. The only thing crazier than the idea itself is the fact that it might actually work out pretty well for everyone involved.

The DHS idea not only promised the GSA a way out, but also offered a possible solution to some of the new department's institutional problems. "A common location by itself doesn't guarantee the kind of synergy you need," says P. J. Crowley, a senior fellow at the Center for American Progress who participated in the Obama administration's DHS agency review team. "But bringing as many top tier leaders under one roof could finally create a shared vision for the department."

Others smelled opportunity too. In October, Marion Barry addressed a meeting of his constituents in Anacostia's Petey Green Community Center, a windowless, two-story brown building sandwiched between vacant lots. "We have been neglected and disrespected for so long," the seventy-two-year-old ex-mayor declared to a packed house of more than a hundred local residents. "The community deserves this project, doesn't it?" The audience enthusiastically cheered. Four people in the front gave standing ovations. The GSA had promised that construction jobs related to the project would go to Anacostia residents, which is part of why political and business leaders in Barry's Ward 8—which consists mostly of Anacostia—and Washington as a whole see in the DHS headquarters a glimmer of hope for a neighborhood driven into dereliction since mid-century. Anacostia's crack cocaine epidemic had been the main driver behind Washington's status as the murder capital of the world during Barry's late-1980s and mid-'90s tenures as the city's mayor. Crime has since gone down—homicides in the neighborhood's police district are less than half of what they were in 1993—but the government contracting boom and ensuing gentrification that in the last ten years transformed many once rough-edged neighborhoods in Washington hardly touched Anacostia. Ward 8's median annual income is just $14,210, less than a quarter of the District-wide average.

Eleanor Holmes Norton, Washington's nonvoting representative in Congress, who has been trying to lure a federal agency to Anacostia for three years, is bullish on the DHS project, and sees in it a chance for a transformation. "We're going to bring these federal employees the quality retail that they're used to in

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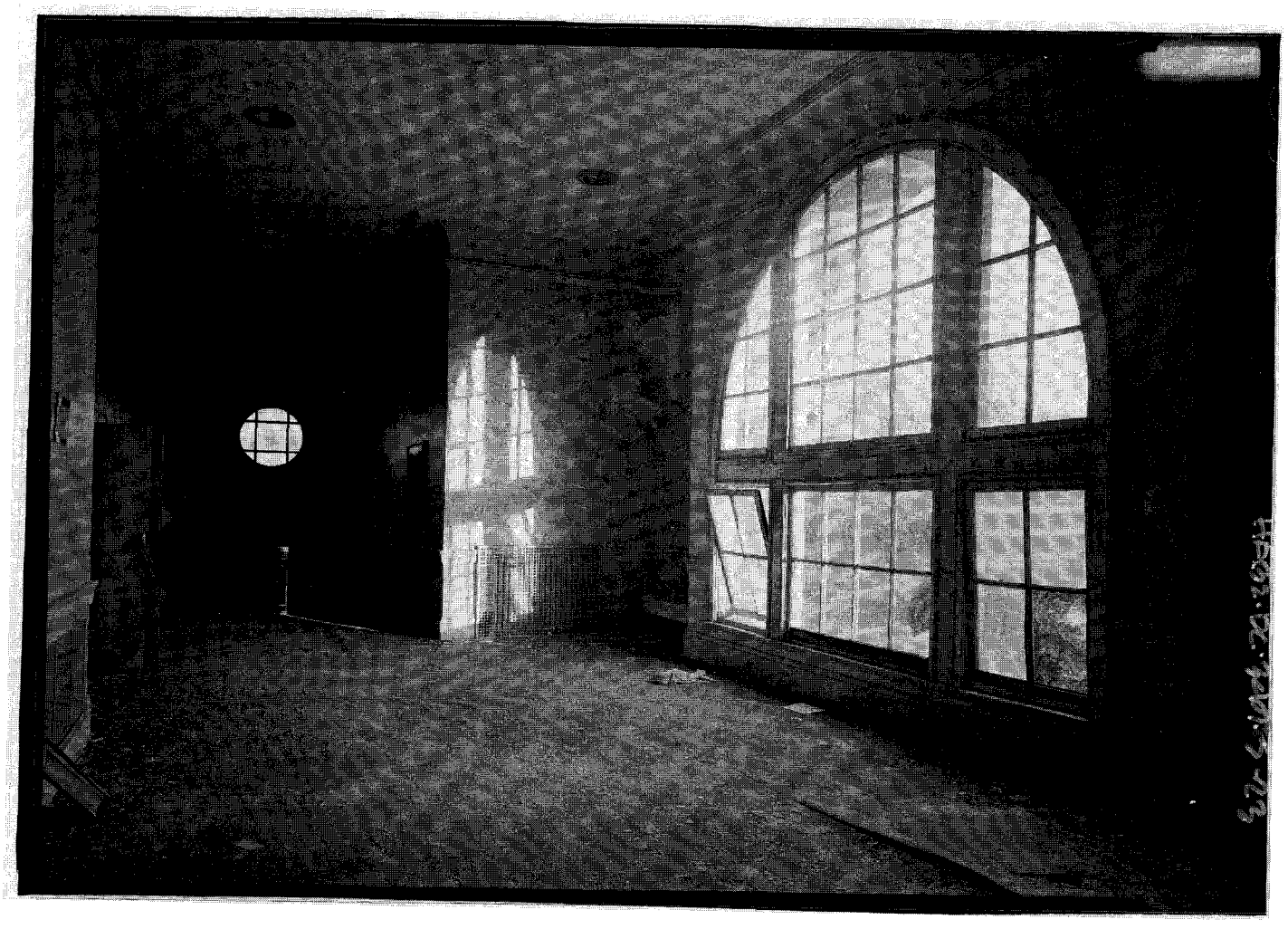
downtown Washington. The economy may be going down, but we're going up."

Ward 8 may have nowhere to go *but* up—when I ask Norton whether the prospective DHS headquarters would compromise Anacostia's character, she replies, "Have you *seen* the neighborhood?" But it's an open question wheth-

David Garrison, a senior fellow at the Brookings Institution who works on metropolitan planning issues, is skeptical, and bluntly compares the idea to the fortified Green Zone in Baghdad, with approximately the same economic effects on the community outside the blast walls. "The DHS employees will

data for), is a particularly juicy apple. It takes a lot of lunch meetings to move that kind of cash, and as of yet Anacostia doesn't have a single white-tablecloth restaurant. If there's a threat here, it may be that the urban blight of Anacostia will be replaced with the dullness of Crystal City, the soulless



er DHS employees, the majority of whom will commute from the suburbs, will ever leave a campus, slated to be completed in 2016, that will feature all the necessary amenities—and a soon-to-be-erected ten-foot-high razor-wire perimeter. "Anacostia is an island unto itself," says one Federal Emergency Management Agency employee, who asked not to be named. "I don't want to go there every day."

drive into town on I-295. They will have lunch on campus with the various cafeterias that will be provided. Then they'll drive home. It almost doesn't matter where this activity will be taking place."

Still, figuring out ways to make money off of federal behemoths is what unofficial Washington does best, and Homeland Security, which spent $11.5 billion on private contracting in 2007 (the last full year the government has

suburban canyonland that has sprung up in the shadow of the Pentagon. But that's a problem that local businesses would probably love to have. And in the meantime, the notoriously demoralized DHS employees can look forward to lots of jokes about having easy access to mental health care. WM

Matthew Blake is a reporter and blogger for the Web site Understanding Government.

Historic American Buildings Survey/Library of Congress

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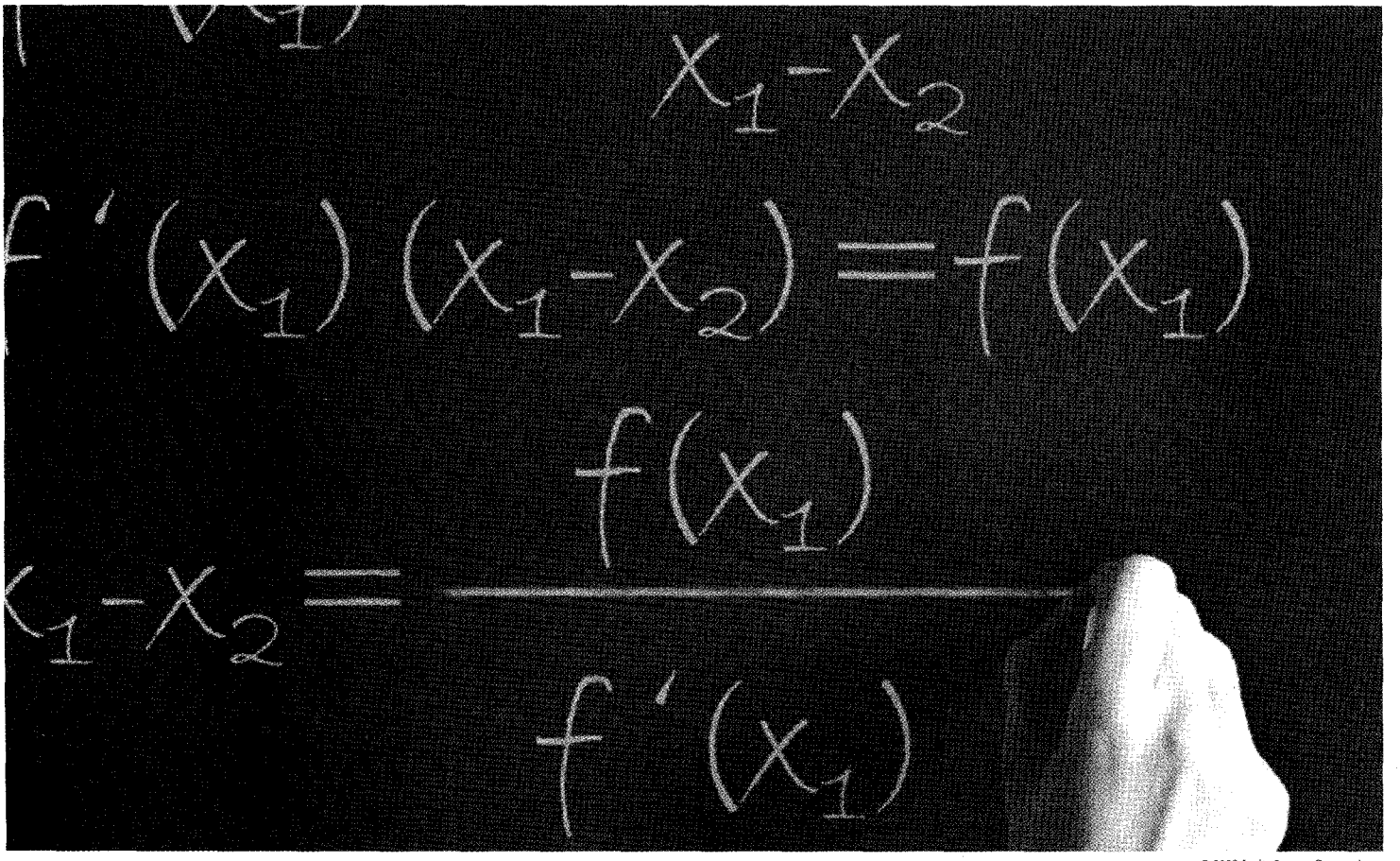

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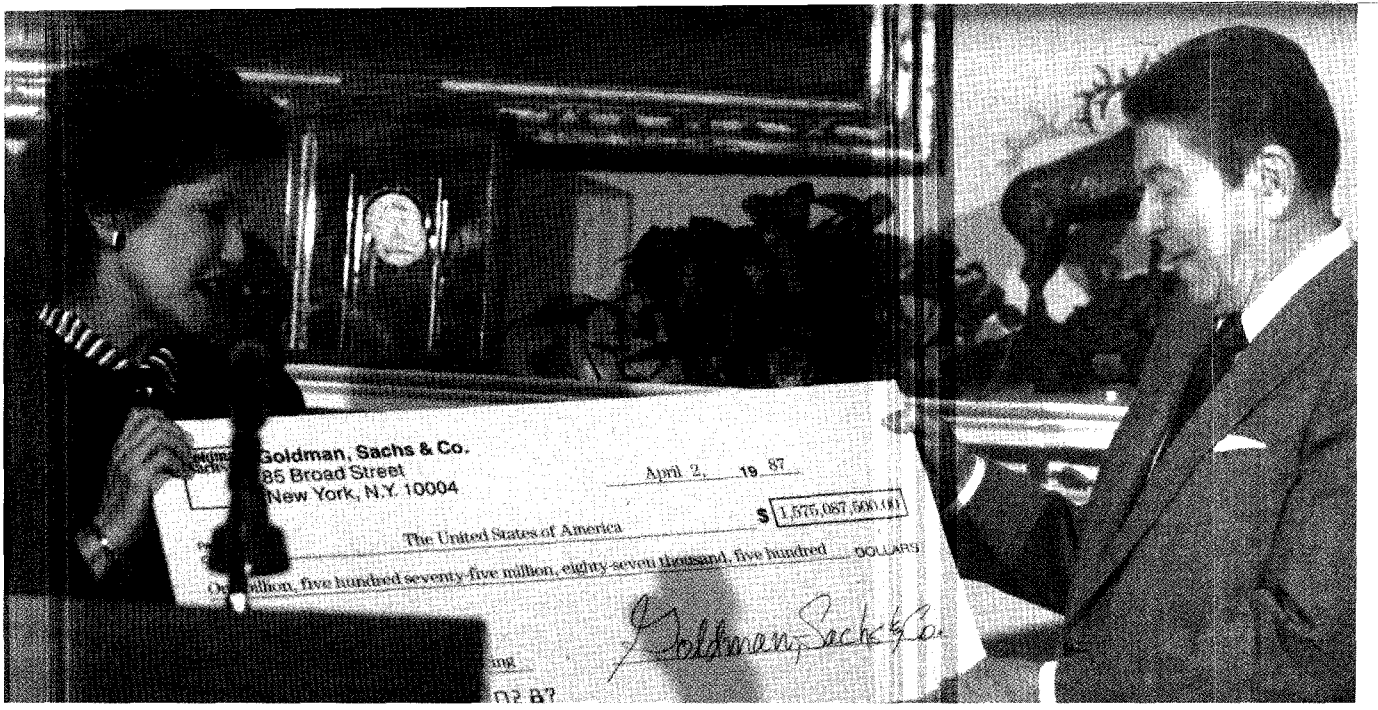

The Wages of Socialism: Ronald Reagan, who believed government was the problem, receives a $1.6 billion check for the sale of one of its solutions, federally managed Consolidated Rail Corporation (Conrail), from Transportation Secretary Elizabeth Dole in April 1987.

Time & Life Pictures/Getty Images

Washington's Turnaround Artists

Think government can't fix the auto industry? Then how did it manage to fix the railroad industry—twice?

By Phillip Longman

The massive corporate bailouts that Washington is undertaking as a result of the economic crisis have left most of us feeling deeply nervous. It's not just the price tag, measured in incomprehensible trillions. It's also the fear that the problems of the financial and auto industries may be so deep and so tangled that no one can fix them—and certainly not a bunch of politicians and bureaucrats in Washington.

But here's the funny thing: any honest reading of history suggests that the federal government has quite an impressive record of rescuing institutions considered too big to fail. In addition to almost routine workouts of failed banks conducted in good and bad times by the Federal Deposit Insurance Corporation and other regulators, the list includes many large industrial companies as well. In 1971, for example, Congress extended emergency loans to failing aircraft builder Lockheed and wound up not only saving a company vital to America's national defense and export manufacturing base, but earning a net income for the Treasury of $5.4 million in loan fees.

In 1980 it did the same for Chrysler, this time extending loan guarantees in exchange for stock warrants that, after the company returned to health and paid back its loans, yielded the government a cool $311 million in capital gains. More recently, in the aftermath of 9/11, Congress granted airlines $5 billion in direct compensation for lost business and up to $10 billion in loan guarantees, again in exchange for stock warrants. That wasn't enough to save many individual airlines from having to undergo restructuring plans imposed by bankruptcy judges, but when Americans took to the air again they found the industry intact and offering plenty of flights. Moreover, by February 2007, airline stocks had recovered enough that the Treasury was able to sell its warrants for a net profit of $119 million, with no loans left outstanding.

Now, however, comes the prospect of something much larger. Government has already thrown billions at the gi-

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gantic mess that is the American auto industry. With Detroit continuing to hemorrhage jobs and cash in a deeply troubled economy, it looks as if government will have to take a much more hands-on approach to reengineering the industry, if not through the bankruptcy courts then through direct executive supervision. Should we be worried that government will make a hash of it? Of course. But there is a bright shining example from not so long ago of government bureaucrats engineering the revival of an industry easily as troubled as today's automakers and, if anything, more central to the economy. And it all turned out better than anyone dared hope, with a dazzling return to profitability. It is the story of the railroad industry, and while the parallels with today's auto industry are not exact, they are close enough to provide many useful lessons. Its example suggests that, as the automakers return to Washington for a second round of assistance, the greatest danger may well be not that government will intervene too much, but that it won't intervene enough.

The Wreck of Penn Central

If you think General Motors has a big problem with ineffective management, truculent unions, and declining market share, consider the Penn Central Company of the late 1960s. Formed by the merger of three ailing railroads in 1968, Penn Central was a colossus, controlling most of the rail network throughout what was becoming America's Rust Bowl, from Boston and New York to Chicago and St. Louis. It was also a colossal mess from day one. Though the merger had been planned for years, for example, the computer systems of the combined companies couldn't talk to one another, so Penn Central started life by losing track of thousands of freight cars with no idea where they were supposed to go or how to find out.

Penn Central's feuding top managers disagreed on just about everything except one point: they wanted in the worst way to get out of the railroad business. So they neglected maintenance of track and equipment, cooked the company's books, and used what capital they could raise trying to become a modish, 1970s-style conglomerate. Just as General Motors once tried to branch into aerospace, Penn Central bought Executive Jet Aviation. It also diversified into theme parks, pipelines, real estate, and what we would today call a hedge fund, through which Penn Central executives engineered lucrative stock deals for themselves. According to a congressional investigation, Penn Central's top executives also spent plenty of company dough securing the companionship of comely young women. Congressman Wright Patman fumed that this was "one of the most sordid pictures of the American business Community that has ever been revealed in official documents." Among the names named was a buxom model named Linda Vaughn, who was well known in auto-racing circles for riding around the racetrack clinging to a giant gearshift replica before the starting flag.

But mismanagement at the top was hardly the only cause of the company's problems. Beset by mounting competition from trucks, Penn Central was prevented by federal regulation from raising rates high enough to cover costs. Government mandates also forced it to run money-losing passenger trains for the public's convenience. In addition, the company was stymied by politically entrenched unions that extracted two days' pay for half a day's work.

It all came crashing down in May 1970. Because of Penn Central's creative bookkeeping, few on Wall Street saw it coming. The exposure to the company's revolving loans was so great that it required a dramatic intervention by the Federal Reserve to prevent a meltdown of Wall Street's commercial paper market. President Richard Nixon, after refusing to take a call from his panicked transportation secretary, allowed the company to go into bankruptcy. Eventually, however, he determined that it was too big to fail; hundreds of thousands of jobs, as well as key industries like steel and auto manufacturing, were at stake. And so Penn Central received bundles of emergency loans.

But as with today's loans to General Motors and Chrysler, more money didn't fix the problems. Instead, new ones developed. Unions went on strike. A key bridge over the Hudson River caught fire, cutting off much of New England from rail service. The company was so disorganized that a connecting short-line railroad stole and relettered 352 of its boxcars and Penn Central didn't notice. Due to its dilapidated infrastructure, Penn Central suffered an average of twenty derailments a day, and on many lines trains were forced to crawl along at just a few miles per hour. Then Hurricane Agnes deluged the Northeast, wiping out bridges and washing out track. Between natural disasters, mismanagement, and a tanking economy, five other railroads in the region

Conrail's first government-appointed CEO cracked down on bad suppliers, and rebuilt equipment and track. Within a few short years, the bureaucrats running the company had evolved into a lean, mean management team that later became the subject of case studies on corporate turnarounds.

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Pole Position: Linda Vaughn, better known on the racing circuit as "Miss Hurst Golden Shifter," enjoyed the attentions of Penn Central's top brass before the company was taken over by federal bureaucrats in 1976.

Getty Images

also fell into bankruptcy. On June 29, 1972, Penn Central's trustees threw up their hands and called for liquidation.

This, however, could not be allowed to happen. Because railroads operate as a network, scrapping the Penn Central would have threatened the viability of the nation's entire rail system. And while railroads had begun to lose their luster, they were still carrying more tonnage than ever before in their history, making their survival essential to the country's manufacturing base, including truck and automakers. In the bowels of a U.S. Department of Transportation facility at Buzzard Point in southeast Washington, D.C., a handful of bureaucrats had been trying to figure a way out of this bind for years. Edward Jordan, Jim McClellan, Jim Hagen, Gerald Davies, and others had pored over railroad maps and financial statements in search of a plan for restructuring Penn Central and other failed railroads. It was a thankless task. No private railroad was interested in buying more than a few pieces of Penn Central and the other failed roads. Members of Congress opposed any curtailments of service in their districts, but railed against any additional use of public money to cover the cost. Somehow, the bureaucrats would have to figure out not only how to make the weed-choked rail infrastructure of America's Rust Bowl work again, but also how to convince Congress and the White House that they could earn a profit doing it.

Under other circumstances, the plan they eventually brought to fruition in 1976 might never have seen the light of day. But this was a hard time for America, and the nation's political leadership was variously distracted and desperate. The twin hangovers from Vietnam and Watergate throbbed, the energy crisis worsened, and inflation mounted. Don McLean's number one hit, "American Pie," caught the mood of the moment with its lyric "Father, Son, and Holy Ghost / They caught the last train for the coast." With bad news on the doorstep day after day, a vote to have government seize moribund railroads would barely make the papers. By contrast, as super-lobbyist Charlie Walker, then employed by alarmed shippers, explained in an early-morning call to a young Dick Cheney, then President Gerald Ford's chief of staff, it sure would be sad if all the trains in the Northeast stopped just before the upcoming New Hampshire primary. And thus was set in motion the creation of a new government entity called the Consolidated Rail Corporation, or Conrail for short.

Born on April Fools' Day

Conrail started operation on April 1, 1976, and at the outset it looked as if it were all going to end very badly. During its first few years of existence, Conrail blew through $7 billion in direct federal spending while piling up losses as high as $1 million a day. Meanwhile, Penn Central and its large institutional investors deployed a swarm of well-connected lawyers and lobbyists to make the best of the buyout, and wound up getting the government to pay them handsomely for taking the money-losing railroad off their hands.

So far, market conservatives and pessimists generally seemed to have their worldview confirmed. Yet within a few short years, the bureaucrats running Conrail evolved into a lean, mean management team that later became the subject of case studies on corporate turnarounds. Edward Jordan, formerly a top bureaucrat at the federally chartered, nonprofit U.S. Railway Association, who had helped craft the plan for Conrail, became its first CEO. He cracked down on suppliers selling faulty equipment, rebuilt half the railroad's engines and 21,000 freight cars, and refurbished 14,000 miles of track. He also streamlined and reengineered the railroad's management and marketing ef-

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forts, renegotiated its labor contracts, and, most importantly, went to work on politicians who continued to insist that railroads operate money-losing branch lines and passenger trains. In a statement that was shocking in the political atmosphere of the time, Jordan declared, "It is not the responsibility of a railroad to operate social services at a loss."

And with all this public money at stake, politicians started listening hard to what Conrail and other railways were saying about the public policies that were driving their industry toward ruin. This is a key to understanding why the Conrail bailout worked so well. Politicians could grandstand all they wanted about call girls, secret Swiss bank accounts, lost boxcars, and other legacies of Penn Central's management, but now they had ownership of the problem and had to concentrate on the ways in which public policy had contributed to it. The most dramatic policy change came with the enactment of the Staggers Act, signed into law by President Jimmy Carter in 1980, which, for the first time in nearly a century, allowed railroads to set their own rates according to market conditions—a prohibition that had been hobbling their ability to compete with trucks and barges. In short order, this and other reforms created a policy environment in which both Conrail and the rail industry generally would begin a dramatic comeback after decades of decline and near demise by the end of the 1970s. Indeed, Conrail became so profitable that by the mid-1980s the political process had to contend with another vexing, if happier question: What to do with this coveted public asset?

Ronald Reagan, who had famously said, "Government is not the solution to our problems, government is the problem," naturally wanted to privatize it—never mind that in this case government *had* provided the solution, and had made a tidy profit doing it. A donnybrook ensued, with the once-failed, now-lucrative railroad as the prize. Transportation Secretary Elizabeth Dole, under intense lobbying pressure, eventually decided that a private railroad, Norfolk Southern, should get the nod. With the help of her husband, then Senator Bob Dole, she got the deal through the Senate. But Conrail's government managers, seeking to avoid a hostile takeover by Norfolk Southern, teamed up with Wall Street investment firm Morgan Stanley, which was looking to make huge fees on a public offering. Together, they won the support of the all-powerful Democratic Energy and Commerce Committee chairman, Congressman John Dingell, who nixed the deal in the House. Morgan Stanley wound up taking Conrail public in 1987 in what at the time was the largest initial public offering in Wall Street history: $1.65 billion. The Treasury used the money to help defray the deficits the Reagan administration had incurred.

Ten years later, Conrail had gained so much more value that two other railroads put out $115 a share to carve the company up in one of the largest and nastiest takeover fights of the 1990s. To be sure, the route to high profitability for Conrail, particularly after it became a private company, involved abandoning hundreds of branch lines and several strategic mainlines. With the loss of rail service, many regions suffered economic decline and/or had to make much greater use of trucks, which are far less energy efficient and create far more pollution while also contributing mightily to highway congestion, accidents, and disrepair. Many of the routes Conrail abandoned would be highly valuable today; they will be missed even more in the future as the volume of freight traffic grows. So the story of Conrail is not an unblemished one. But this shouldn't diminish its moral: government, it turns out, *can* run a railroad.

Progressive Era Redux

Lest you think this story is anomalous or unprecedented, consider this: during World War I, President Woodrow Wilson nationalized the country's entire rail system, with results that were similarly stunning. Coming into the teens, railroads were in financial and physical shambles—deeply in debt, forced by ruinous competition to give big, under-the-table rebates to large shippers like Standard Oil, threatened by militant labor unions and antitrust legislation, and shackled by a regulatory regime that, under the Interstate Commerce Commission, overwhelmingly favored shippers with low rates. As preparations for war drove up the volume of rail traffic, the nation's entire rail system at one point became so congested that it simply seized, leaving 180,000 loaded freight cars unable to move.

Simply throwing vast sums of money at Detroit is unlikely to save the American auto industry, no matter how many strings are attached. Better for the federal government to take direct, if temporary, control, as it did with the railroads.

Wilson faced a simple choice: fix the railroads or lose the war. This was the climax of the Progressive era, and Wilson knew just what to do. Converting many experienced rail managers into modestly paid government bureaucrats, he set them to work in his newly formed U.S. Railroad Administration. After dividing the nation's rail network into seven regions, they quickly fixed its many

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choke points and other sources of inefficiency. The USRA designed and commissioned the construction of 2,000 steam locomotives, in six standard sizes with interchangeable parts, which vastly cut repair costs. USRA bureaucrats also added 100,000 new standardized freight cars to the nation's fleet, placed embargoes on shippers who ordered more cars than they could use, and sped up and rationalized the logistics of train movements in a way that previously competing private railroads could not do.

With no apparent sense of irony, the USRA also reversed many of the government regulations that had contributed to the industry's failure, by raising shipping rates 25 percent and allowing for more pooling of resources. After reverting to private ownership at the war's end, railroads generally thrived until the Great Depression, in no small measure because of all the public investment put into them during the war. So it might be said that during a brief period of wartime socialism, the U.S. government bailed out a central industry that had been undone by a combination of capitalist incompetence and inept government regulation—which should give ideologues of all stripes something to think about.

When government takes responsibility for an ailing industry, it gets a combination of hands-on learning experience and a strong incentive to do the job right: politicians pay more attention to the ways in which their own decisions have made problems worse.

Auto Applications

What do Conrail's and Woodrow Wilson's forays into socialism tell us? For one, they contradict the doctrinaire idea that government will always and everywhere mess up if it gets hands-on control of a private industry—even if in both instances other government policies largely contributed to the crisis that government control ultimately solved. The dramatic improvements to rail technology and logistics achieved by the USRA during the Great War also belie the notion that market forces alone will always be a sufficient spur to innovation and maximum efficiency. When government takes responsibility for an ailing industry, it also gets a combination of a hands-on learning experience and a strong incentive to do the job right: with public money at stake in the industry's success, politicians pay more attention to the ways in which their own past decisions are making its problems worse.

These are vitally important truths to keep in mind as Washington considers how best to help an ailing Detroit avoid catastrophe. The auto industry's problems, like the railroads', are not solely the fault of arrogant, out-of-touch executives flying to and from begging sessions on Capitol Hill in private jets; government policies have shaped the environment in which automakers must produce and sell vehicles, often for the worse. Antiquated state laws forbid Detroit from streamlining its distribution networks by closing unneeded dealerships—a hindrance that advantages foreign automakers, who entered the U.S. market later and accordingly built fewer dealerships. Similarly, foreign car companies have an edge in producing smaller, more fuel-efficient cars because they have eager domestic markets for such vehicles thanks to government policies in those countries that keep the price of gasoline high. In America, by contrast, decades of cheap-oil policies out of Washington—many wrangled at the behest of the auto industry—brought it short-term profits from gas-guzzling SUVs, but long-term ruin.

Simply throwing vast sums of money at Detroit, then, is unlikely to save the American auto industry, no matter how many strings are attached to that money. Better for the federal government to take direct, if temporary, control of U.S. automakers, as it did with the railroads. Only at that point will Washington have both the leverage to force needed management reforms as well as the incentive to change its own policies—increasing gas taxes, preempting state dealership laws, and easing Detroit's high health care costs by, among other things, passing universal health care.

As with Conrail, however, care would have to be taken not to surrender too many public goods to the altar of profitability. It would be wonderful if the government could one day sell its shares in General Motors at the same high price Conrail eventually fetched—but not if the profits came by turning GM into a monopoly or by making Americans still more dependent on cars. When it comes to rescuing deeply troubled industrial companies that the country cannot afford to do without, Conrail's successful managers have left us with a good checklist to follow: leave your ideology at the door, pay more attention to the engineers and managers on the ground than to the financiers in the corner offices, and remember that social returns, not profits, are the ultimate measure of success. WM

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No Return to Normal

Why the economic crisis, and its solution, are bigger than you think.

By James K. Galbraith

Barack Obama's presidency began in hope and goodwill, but its test will be its success or failure on the economics. Did the president and his team correctly diagnose the problem? Did they act with sufficient imagination and force? And did they prevail against the political obstacles—and not only that, but also against the procedures and the habits of thought to which official Washington is addicted?

The president has an economic program. But there is, so far, no clear statement of the thinking behind that program, and there may not be one, until the first report of the new Council of Economic Advisers appears next year. We therefore resort to what we know about the economists: the chair of the National Economic Council, Lawrence Summers; the CEA chair, Christina Romer; the budget director, Peter Orszag; and their titular head, Treasury Secretary Timothy Geithner. This is plainly a capable, close-knit group, acting with energy and commitment. Deficiencies of their program cannot, therefore, be blamed on incompetence. Rather, if deficiencies exist, they probably result from their shared background and creed—in short, from the limitations of their ideas.

The deepest belief of the modern economist is that the economy is a self-stabilizing system. This means that, even if nothing is done, normal rates of employment and production will someday return. Practically all modern economists believe this, often without thinking much about it. (Federal Reserve Chairman Ben Bernanke said it reflexively in a major speech in London in January: "The global economy will recover." He did not say how he knew.) The difference between conservatives and liberals is over whether policy can usefully speed things up. Conservatives say no, liberals say yes, and on this point Obama's economists lean left. Hence the priority they gave, in their first days, to the stimulus package.

But did they get the scale right? Was the plan big enough? Policies are based on models; in a slump, plans for spending depend on a forecast of how deep and long the slump would otherwise be. The program will only be correctly sized if the forecast is accurate. And the forecast depends on the underlying belief. If recovery is not built into the genes of the system, then the forecast will be too optimistic, and the stimulus based on it will be too small.

Consider the baseline economic forecast of the Congressional Budget Office, the nonpartisan agency lawmakers rely on to evaluate the economy and their budget plans. In its early-January forecast, the CBO measured and projected the difference between actual economic performance and "normal" economic performance—the so-called GDP gap. The forecast has two astonishing features. First, the

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CBO did not expect the present recession to be any worse than that of 1981–82, our deepest postwar recession. Second, the CBO expected a turnaround beginning late this year, with the economy returning to normal around 2015, even if Congress had taken no action at all.

With this projection in mind, the recovery bill pours a bit less than 2 percent of GDP into new spending per year, plus some tax cuts, for two years, into a GDP gap estimated to average 6 percent for three years. The stimulus does not need to fill the whole gap, because the CBO expects a "multiplier effect," as first-round spending on bridges and roads, for example, is followed by second-round spending by steelworkers and road crews. The CBO estimates that because of the multiplier effect, two dollars of new public spending produces about three dollars of new output. (For tax cuts the numbers are lower, since some of the cuts will be saved in the first round.) And with this help, the recession becomes fairly mild. After two years, growth would be solidly established and Congress's work would be done. In this way, the duration as well as the scale of action was driven, behind the scenes, by the CBO's baseline forecast.

Why did the CBO reach this conclusion? On depth, CBO's model is based on the postwar experience, and such models cannot predict outcomes more serious than anything already seen. If we are facing a downturn worse than 1982, our computers won't tell us; we will be surprised. And if the slump is destined to drag on, the computers won't tell us that either.

The deepest belief of the modern economist is that the economy is a self-stabilizing system, and the government's forecasts depend on that belief. If recovery is not built into the genes of the system, then the stimulus will be too small.

Baked into the CBO model we find a "natural rate of unemployment" of 4.8 percent; the model moves the economy back toward that value no matter what. In the real world, however, there is no reason to believe this will happen. Some alternative forecasts, freed of the mystical return to "normal," now project a GDP gap twice as large as the CBO model predicts, and with no near-term recovery at all.

Considerations of timing also influenced the choice of line items. The bill tilted toward "shovel-ready" projects like refurbishing schools and fixing roads, and away from projects requiring planning and long construction lead times, like urban mass transit. The push for speed also influenced the bill in another way. Drafting new legislative authority takes time. In an emergency, it was sensible for Chairman David Obey of the House Appropriations Committee to mine the legislative docket for ideas already commanding broad support (especially within the Democratic caucus). In this way he produced a bill that was a triumph of fast drafting, practical politics, and progressive principle—a good bill which the Republicans hated. But the scale of action possible by such means is unrelated, except by coincidence, to what the economy needs.

Three further considerations limited the plan. There was, to begin with, the desire for political consensus; President Obama chose to start his administration with a bill that might win bipartisan support and pass in Congress by wide margins. (He was, of course, spurned by the Republicans.) Second, the new team also sought consensus of another type. Christina Romer polled a bipartisan group of professional economists, and Larry Summers told *Meet the Press* that the final package reflected a "balance" of their views. This procedure guarantees a result near the middle of the professional mind-set. The method would be useful if the errors of economists were unsystematic. But they are not. Economists are a cautious group, and in *any* extreme situation the midpoint of professional opinion is bound to be wrong.

Third, the initial package was affected by the new team's desire to get past this crisis and to return to the familiar problems of their past lives. For these protégés of Robert Rubin, veterans in several cases of Rubin's Hamilton Project, a key preconception has always been the budget deficit and what they call the "entitlement problem." This is D.C.-speak for rolling back Social Security and Medicare, opening new markets for fund managers and private insurers, behind a wave of budget babble about "long-term deficits" and "unfunded liabilities." To this our new president is not immune. Even before the inauguration Obama was moved to commit to "entitlement reform," and on February 23 he convened what he called a "fiscal responsibility summit." The idea took hold that after two years or so of big spending, the return to normal would be under way, and the costs of fiscal relief and infrastructure improvement might be recouped, in part by taking a pound of flesh from the incomes and health care of the old.

The chance of a return to normal depends, in turn, on the banking strategy. To Obama's economists a "normal" economy is led and guided by private banks. When domestic credit booms are under way, they tend to generate high employment and low inflation; this makes the public budget look good, and spares the president and Congress many hard decisions. For this reason the new team instinctively seeks to return the bankers to their normal position at the top of the economic hill. Secretary Geithner told CNBC, "We have a financial system that is run by private shareholders, managed by private institutions, and we'd like to do our best to preserve that system."

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But, is this a realistic hope? Is it even a possibility? The normal mechanics of a credit cycle do involve interludes when asset values crash and credit relations collapse. In 1981, Paul Volcker's campaign against inflation caused such a crash. But, though they came close, the big banks did not fail then. (I learned recently from William Isaac, Ronald Reagan's chair of the FDIC, that the government had contingency plans to nationalize the large banks in 1982, had Mexico, Argentina, or Brazil defaulted outright on their debts.) When monetary policy relaxed and the delayed tax cuts of 1981 kicked in, there was both pent-up demand for credit and the capacity to supply it. The final result was that the economy recovered quickly. Again in 1994, after a long period of credit crunch, banks and households were strong enough, even without a stimulus, to support a vast renewal of lending which propelled the economy forward for six years.

The Bush-era disasters guarantee that these happy patterns will not be repeated. For the first time since the 1930s, millions of American households are financially ruined. Families that two years ago enjoyed wealth in stocks and in their homes now have neither. Their 401(k)s have fallen by half, their mortgages are a burden, and their homes are an albatross. For many the best strategy is to mail the keys to the bank. This practically assures that excess supply and collapsed prices in housing will continue for years. Apart from cash—protected by deposit insurance and now desperately being conserved—the American middle class finds today that its major source of wealth is the implicit value of Social Security and Medicare—illiquid and intangible but real and inalienable in a way that home and equity values are not. And so it will remain, as long as future benefits are not cut.

In addition, some of the biggest banks are bust, almost for certain. Having abandoned prudent risk management in a climate of regulatory negligence and complicity under Bush, these banks participated gleefully in a poisonous game of abusive mortgage originations followed by rounds of pass-the-bad-penny-to-the-greater-fool. But they could not pass them all. And when in August 2007 the music stopped, banks discovered that the markets for their toxic-mortgage-backed securities had collapsed, and found themselves insolvent. Only a dogged political refusal to admit this has since kept the banks from being taken into receivership by the Federal Deposit Insurance Corporation—something the FDIC has the power to do, and has done as recently as last year with IndyMac in California.

Geithner's banking plan would prolong the state of denial. It involves government guarantees of the bad assets, keeping current management in place and attempting to attract new private capital. (Conversion of preferred shares to equity, which may happen with Citigroup, conveys no powers that the government, as regulator, does not already have.) The idea is that one can fix the banks from the top down, by reestablishing markets for their bad securities. If the idea seems familiar, it is: Henry Paulson also pressed for this, to the point of winning congressional approval. But then he abandoned the idea. Why? He learned it could not work.

Paulson faced two insuperable problems. One was quantity: there were too many bad assets. The project of buying them back could be likened to "filling the Pacific Ocean with basketballs," as one observer said to me at the time. (When I tried to find out where the original request for $700 billion in the Troubled Asset Relief Program came from, a senior Senate aide replied, "Well, it's a number between five hundred billion and one trillion.")

Larry Summers said that the final stimulus package reflected a balance of the views of a bipartisan group of economists. But economists are a cautious group, and in any extreme situation the midpoint of professional opinion is bound to be wrong.

The other problem was price. The only price at which the assets could be disposed of, protecting the taxpayer, was of course the market price. In the collapse of the market for mortgage-backed securities and their associated credit default swaps, this price was too low to save the banks. But any higher price would have amounted to a gift of public funds, justifiable only if there was a good chance that the assets might recover value when "normal" conditions return.

That chance can be assessed, of course, only by doing what any reasonable private investor would do: due diligence, meaning a close inspection of the loan tapes. On the face of it, such inspections will reveal a very high proportion of missing documentation, inflated appraisals, and other evidence of fraud. (In late 2007 the ratings agency Fitch conducted this exercise on a small sample of loan files, and found indications of misrepresentation or fraud present in practically every one.) The reasonable inference would be that many more of the loans will default. Geithner's plan to guarantee these so-called assets, therefore, is almost sure to overstate their value; it is only a way of delaying the ultimate public recognition of loss, while keeping the perpetrators afloat.

Delay is not innocuous. When a bank's insolvency is ignored, the incentives for normal prudent banking collapse. Management has nothing to lose. It may take big new risks, in volatile markets like commodities, in the hope of salvation

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before the regulators close in. Or it may loot the institution—*nomenklatura privatization*, as the Russians would say—through unjustified bonuses, dividends, and options. It will never fully disclose the extent of insolvency on its own.

The most likely scenario, should the Geithner plan go through, is a combination of looting, fraud, and a renewed speculation in volatile commodity markets such as oil. Ultimately the losses fall on the public anyway, since deposits are largely insured. There is no chance that the banks will simply resume normal long-term lending. To whom would they lend? For what? Against what collateral? And if banks are recapitalized without changing their management, why should we expect them to change the behavior that caused the insolvency in the first place?

The first thing we need, in the wake of the recovery bill, is more recovery bills. The next efforts should be larger, with open-ended support for state and local governments, public utilities, transit authorities, public hospitals, schools, and universities.

The oddest thing about the Geithner program is its failure to act as though the financial crisis is a true crisis—an integrated, long-term economic threat—rather than merely a couple of related but temporary problems, one in banking and the other in jobs. In banking, the dominant metaphor is of plumbing: there is a blockage to be cleared. Take a plunger to the toxic assets, it is said, and credit conditions will return to normal. This, then, will make the recession essentially normal, validating the stimulus package. Solve these two problems, and the crisis will end. That's the thinking.

But the plumbing metaphor is misleading. Credit is not a flow. It is not something that can be forced downstream by clearing a pipe. Credit is a contract. It requires a borrower as well as a lender, a customer as well as a bank. And the borrower must meet two conditions. One is creditworthiness, meaning a secure income and, usually, a house with equity in it. Asset prices therefore matter. With a chronic oversupply of houses, prices fall, collateral disappears, and even if borrowers are willing they can't qualify for loans. The other requirement is a willingness to borrow, motivated by what Keynes called the "animal spirits" of entrepreneurial enthusiasm. In a slump, such optimism is scarce. Even if people have collateral, they want the security of cash. And it is precisely because they want cash that they will not deplete their reserves by plunking down a payment on a new car.

The credit flow metaphor implies that people came flocking to the new-car showrooms last November and were turned away because there were no loans to be had. This is not true—what happened was that people stopped coming in. And they stopped coming in because, suddenly, they felt poor.

Strapped and afraid, people want to be in cash. This is what economists call the liquidity trap. And it gets worse: in these conditions, the normal estimates for multipliers—the bang for the buck—may be too high. Government spending on goods and services always increases total spending directly; a dollar of public spending is a dollar of GDP. But if the workers simply save their extra income, or use it to pay debt, that's the end of the line: there is no further effect. For tax cuts (especially for the middle class and up), the new funds are mostly saved or used to pay down debt. Debt reduction may help lay a foundation for better times later on, but it doesn't help now. With smaller multipliers, the public spending package would need to be even larger, in order to fill in all the holes in total demand. Thus financial crisis makes the real crisis worse, and the failure of the bank plan practically assures that the stimulus also will be too small.

In short, if we are in a true collapse of finance, our models will not serve. It is then appropriate to reach back, past the postwar years, to the experience of the Great Depression. And this can only be done by qualitative and historical analysis. Our modern numerical models just don't capture the key feature of that crisis—which is, precisely, the collapse of the financial system.

If the banking system is crippled, then to be effective the public sector must do much, much more. How much more? By how much can spending be raised in a real depression? And does this remedy work? Recent months have seen much debate over the economic effects of the New Deal, and much repetition of the commonplace that the effort was too small to end the Great Depression, something achieved, it is said, only by World War II. A new paper by the economist Marshall Auerback has usefully corrected this record. Auerback plainly illustrates by how much Roosevelt's ambition exceeded anything yet seen in this crisis:

> *[Roosevelt's] government hired about 60 per cent of the unemployed in public works and conservation projects that planted a billion trees, saved the whooping crane, modernized rural America, and built such diverse projects as the Cathedral of Learning in Pittsburgh, the Montana state capitol, much of the Chicago lakefront, New York's Lincoln Tunnel and Triborough Bridge complex, the Tennessee Valley Authority and the aircraft carriers Enterprise and Yorktown. It also built or renovated 2,500 hospitals, 45,000 schools, 13,000 parks and playgrounds, 7,800 bridg-*

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es, 700,000 miles of roads, and a thousand airfields. And it employed 50,000 teachers, rebuilt the country's entire rural school system, and hired 3,000 writers, musicians, sculptors and painters, including Willem de Kooning and Jackson Pollock.

In other words, Roosevelt employed Americans on a vast scale, bringing the unemployment rates down to levels that were tolerable, even before the war—from 25 percent in 1933 to below 10 percent in 1936, if you count those employed by the government as employed, which they surely were. In 1937, Roosevelt tried to balance the budget, the economy relapsed again, and in 1938 the New Deal was relaunched. This again brought unemployment down to about 10 percent, still before the war.

The New Deal rebuilt America physically, providing a foundation (the TVA's power plants, for example) from which the mobilization of World War II could be launched. But it also saved the country politically and morally, providing jobs, hope, and confidence that in the end democracy was worth preserving. There were many, in the 1930s, who did not think so.

What did *not* recover, under Roosevelt, was the private banking system. Borrowing and lending—mortgages and home construction—contributed far less to the growth of output in the 1930s and '40s than they had in the 1920s or would come to do after the war. If they had savings at all, people stayed in Treasuries, and despite huge deficits interest rates for federal debt remained near zero. The liquidity trap wasn't overcome until the war ended.

It was the war, and only the war, that restored (or, more accurately, created for the first time) the financial wealth of the American middle class. During the 1930s public spending was large, but the incomes earned were spent. And while that spending increased consumption, it did not jumpstart a cycle of investment and growth, because the idle factories left over from the 1920s were quite sufficient to meet the demand for new output. Only after 1940 did total demand outstrip the economy's capacity to produce civilian private goods—in part because private incomes soared, in part because the government ordered the production of some products, like cars, to halt.

All that extra demand would normally have driven up prices. But the federal government prevented this with price controls. (Disclosure: this writer's father, John Kenneth Galbraith, ran the controls during the first year of the war.) And so, with nowhere else for their extra dollars to go, the public bought and held government bonds. These provided claims

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to postwar purchasing power. After the war, the existence of those claims could, and did, establish creditworthiness for millions, making possible the revival of private banking, and on the broadly based, middle-class foundation that so distinguished the 1950s from the 1920s. But the relaunching of private finance took twenty years, and the war besides.

A brief reflection on this history and present circumstances drives a plain conclusion: the full restoration of private credit will take a long time. It will follow, not precede, the restoration of sound private household finances. There is no way the project of resurrecting the economy by stuffing the banks with cash will work. Effective policy can only work the other way around.

That being so, what must now be done? The first thing we need, in the wake of the recovery bill, is more recovery bills. The next efforts should be larger, reflecting the true scale of the emergency. There should be open-ended support for state and local governments, public utilities, transit authorities, public hospitals, schools, and universities for the duration, and generous support for public capital investment in the short and long term. To the extent possible, all the resources being released from the private residential and commercial construction industries should be absorbed into public building projects. There should be comprehensive foreclosure relief, through a moratorium followed by restructuring or by conversion-to-rental, except in cases of speculative investment and borrower fraud. The president's foreclosure-prevention plan is a useful step to relieve mortgage burdens on at-risk households, but it will not stop the downward spiral of home prices and correct the chronic oversupply of housing that is the cause of that.

A comprehensive national effort to develop alternative energy won't produce economic recovery gains on the scale of wartime mobilization. But such a thing, if done right, could return the country to full employment and keep it there, for years.

Second, we should offset the violent drop in the wealth of the elderly population as a whole. The squeeze on the elderly has been little noted so far, but it hits in three separate ways: through the fall in the stock market; through the collapse of home values; and through the drop in interest rates, which reduces interest income on accumulated cash. For an increasing number of the elderly, Social Security and Medicare wealth are all they have.

That means that the entitlement reformers have it backward: instead of cutting Social Security benefits, we should increase them, especially for those at the bottom of the benefit scale. Indeed, in this crisis, precisely because it is universal and efficient, Social Security is an economic recovery ace in the hole. Increasing benefits is a simple, direct, progressive, and highly efficient way to prevent poverty and sustain purchasing power for this vulnerable population. I would also argue for lowering the age of eligibility for Medicare to (say) fifty-five, to permit workers to retire earlier and to free firms from the burden of managing health plans for older workers.

This suggestion is meant, in part, to call attention to the madness of talk about Social Security and Medicare cuts. The prospect of future cuts in this modest but vital source of retirement security can only prompt worried prime-age workers to spend less and save more today. And that will make the present economic crisis deeper. In reality, there is no Social Security "financing problem" at all. There is a health care problem, but that can be dealt with only by deciding what health services to provide, and how to pay for them, for the whole population. It cannot be dealt with, responsibly or ethically, by cutting care for the old.

Third, we will soon need a jobs program to put the unemployed to work quickly. Infrastructure spending can help, but major building projects can take years to gear up, and they can, for the most part, provide jobs only for those who have the requisite skills. So the federal government should sponsor projects that employ people to do what they do best, including art, letters, drama, dance, music, scientific research, teaching, conservation, and the nonprofit sector, including community organizing—why not?

Finally, a payroll tax holiday would help restore the purchasing power of working families, as well as make it easier for employers to keep them on the payroll. This is a particularly potent suggestion, because it is large and immediate. And if growth resumes rapidly, it can also be scaled back. There is no error in doing too much that cannot easily be repaired, by doing a bit less.

As these measures take effect, the government must take control of insolvent banks, however large, and get on with the business of reorganizing, re-regulating, decapitating, and recapitalizing them. Depositors should be insured fully to prevent runs, and private risk capital (common and preferred equity and subordinated debt) should take the first loss. Effective compensation limits should be enforced—it is a good thing that they will encourage those at the top to retire. As Senator Christopher Dodd of Connecticut correctly stated in the brouhaha following the discovery that Senate Democrats had put tough limits into the recovery bill, there are many competent replacements for those who leave.

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Ultimately the big banks can be resold as smaller private institutions, run on a scale that permits prudent credit assessment and risk management by people close enough to their client communities to foster an effective revival, among other things, of household credit and of independent small business—another lost hallmark of the 1950s. No one should imagine that the swaggering, bank-driven world of high finance and credit bubbles should be made to reappear. Big banks should be run largely by men and women with the long-term perspective, outlook, and temperament of middle managers, and not by the transient, self-regarding plutocrats who run them now.

The chorus of deficit hawks and entitlement reformers are certain to regard this program with horror. What about the deficit? What about the debt? These questions are unavoidable, so let's answer them. First, the deficit and the public debt of the U.S. government can, should, must, and will increase in this crisis. They will increase whether the government acts or not. The choice is between an active program, running up debt while creating jobs and rebuilding America, or a passive program, running up debt because revenues collapse, because the population has to be maintained on the dole, and because the Treasury wishes, for no constructive reason, to rescue the big bankers and make them whole.

Second, so long as the economy is placed on a path to recovery, even a massive increase in public debt poses no risk that the U.S. government will find itself in the sort of situation known to Argentines and Indonesians. Why not? Because the rest of the world recognizes that the United States performs certain indispensable functions, including acting as the lynchpin of collective security and a principal source of new science and technology. So long as we meet those responsibilities, the rest of the world is likely to want to hold our debts.

Third, in the debt deflation, liquidity trap, and global crisis we are in, there is no risk of even a massive program generating inflation or higher long-term interest rates. That much is obvious from current financial conditions: interest rates on long-maturity Treasury bonds are amazingly low. Those rates also tell you that the markets are not worried about financing Social Security or Medicare. They are more worried, as I am, that the larger economic outlook will remain very bleak for a long time.

Finally, there is the big problem: How to recapitalize the household sector? How to restore the security and prosperity they've lost? How to build the productive economy for the next generation? Is there anything today that we might do that can compare with the transformation of World War II? Almost surely, there is not: World War II doubled production in five years.

Today the largest problems we face are energy security and climate change—massive issues because energy underpins everything we do, and because climate change threatens the survival of civilization. And here, obviously, we need a comprehensive national effort. Such a thing, if done right, combining planning and markets, could add 5 or even 10 percent of GDP to net investment. That's not the scale of wartime mobilization. But it probably could return the country to full employment and keep it there, for years.

Moreover, the work does resemble wartime mobilization in important financial respects. Weatherization, conservation, mass transit, renewable power, and the smart grid are public investments. As with the armaments in World War II, work on them would generate incomes not matched by the new production of consumer goods. If handled carefully—say, with a new program of deferred claims to future purchasing power like war bonds—the incomes earned by dealing with oil security and climate change have the potential to become a foundation of restored financial wealth for the middle class.

Does the president's economic team, forged and trained in normal times, have the range and flexibility of thinking required? If not, everything finally will depend, as it did with Roosevelt, on the imagination and character of President Obama.

This cannot be made to happen over just three years, as we did in 1942–44. But we could manage it over, say, twenty years or a bit longer. What is required are careful, sustained planning, consistent policy, and the recognition now that there are no quick fixes, no easy return to "normal," no going back to a world run by bankers—and no alternative to taking the long view.

A paradox of the long view is that the time to embrace it is right now. We need to start down that path before disastrous policy errors, including fatal banker bailouts and cuts in Social Security and Medicare, are put into effect. It is therefore especially important that thought and learning move quickly. Does the Geithner team, forged and trained in normal times, have the range and the flexibility required? If not, everything finally will depend, as it did with Roosevelt, on the imagination and character of President Obama. WM

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Culture Shock

What happened when one conservative Web site ventured outside the movement bubble.

By Charles Homans

Last May, Conor Friedersdorf, a twenty-eight-year-old recent graduate of NYU's Journalism School, decided he was going to save conservative journalism.

His manifesto, which appeared under the title "Electric Kool-Aid Conservatism" in the online edition of *Doublethink*, a magazine published by a small right-of-center foundation, began by allowing what most conservatives already believed: the mainstream media tilts to the left. "Contra the least-thoughtful conservative critics," however, "there isn't any elite liberal conspiracy at work." The source of the bias was something far more subtle: "The right," Friedersdorf wrote, "has a problem with narrative."

This wasn't entirely conservatives' fault, he wrote—the story of, say, a destitute family's eviction from its apartment made for better copy than the explanation of why rent control was a bad idea from a societal perspective. But conservative writers, he argued, had themselves to blame, too. They were bad at telling stories. Operating forever in the shadow of *National Review* founder William F. Buckley Jr., they had spent half a century honing their rhetorical chops on the romantic notion that an argument, framed eloquently and forcefully enough, could change the course of history. Worse, these arguments tended to be advanced in right-wing publications that made little effort to attract a general audience, devolving into an exercise of limited interest to anyone not already locked inside the echo chamber.

Friedersdorf had a different idea in mind. "I'm not sure another Buckley's what we really need," he wrote. "Instead, I'd prefer another Tom Wolfe, or better yet a dozen. As his generation's conservative commentators railed against The Great Society, insisting its urban antipoverty programs encouraged radicalism, bred dependence on the welfare state, and ignored the root causes

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of unemployment, Mr. Wolfe did something different: reporting." Wolfe had gone to the conductor and composer Leonard Bernstein's cocktail party, watched Park Avenue's finest flatter themselves by sharing hors d'oeurves with Black Panthers, and wrote about it in scathing detail, first in *New York* magazine—the cover featured three white socialites in glittery cocktail dresses with raised fists—and later in *Radical Chic & Mau-Mauing the Flak Catchers*. In doing so, Friedersdorf believed, Wolfe had made a far stronger case for conservatism than the collected works of L. Brent Bozell. And Wolfe hadn't had any need to work within the confines of a conservative shadow institution; writing in *New York* and *Esquire*, he had reached and potentially persuaded an audience that didn't subscribe to Buckley's *National Review*. In sum, Friedersdorf wrote, "the right must conclude that we're better off joining the journalistic project than trying to discredit it."

Shortly after he wrote it, Friedersdorf's "Electric Kool-Aid Conservatism" came to the attention of David Kuo, President Bush's former point man for faith-based initiatives, who had left the administration unhappily and went on to write *Tempting Faith*, the most personal of the dissenting White House memoirs of the Bush years. Kuo had come to believe that the Republican Party's recent adventure with near-unchecked political power had left conservatives with a lot of soul-searching to do, and he wanted to provide them a place to do it. He and his former boss, veteran culture warrior William J. Bennett, were thinking of starting a social networking site for values voters. The project's loss leader, they decided, would be a modestly ambitioned online magazine, a kind of right-of-center *Slate*, tentatively called LibertyWire, and they hired a former Mike Huckabee campaign staffer and blogger named Joe Carter to be its managing editor. LibertyWire's founders were all committed evangelicals, and Carter, who had once run a small newspaper in East Texas, envisioned the site as a place where social conservatives could talk about culture—a safe zone between the purely political critiques of the conservative media and the secular liberal criticism that dominated the mainstream media, neither of which answered the questions he wanted answered about television and movies. "The Christian culture has the 'shit counters': the people who say, 'This movie has thirteen bad words,' or whatever," Carter told me. "We didn't want to do that. We thought there was a real audience for criticism of books, TV, and movies by people who actually *liked* books, TV, and movies."

Kuo and Carter also wanted to attract a younger generation of conservative writers, and thought Friedersdorf would be a good start; "Electric Kool-Aid Conservatism" played to the soft spot both of them had for the New Journalism of the '70s. Ditching the LibertyWire moniker—it sounded like a John Birch Society newsletter—they rechristened the site Culture11, after a list of eleven areas of culture they wanted it to encompass, and debuted quietly on August 20. The project fit the needs of the moment—Bush's approval ratings were below freezing, the presidential campaign was Barack Obama's to lose, and Republicans were unlikely to avoid a rout in both houses of Congress. It was an opportunity for a healthy retreat from politics for serious and thoughtful conservatives, a chance to sort out who they were and what they wanted to accomplish outside of the glare of party politics. Providing the online meeting place in which they could do it seemed like a great idea to Culture11's founders, maybe even one that could succeed as a for-profit enterprise. One of those things turned out to be true.

On its surface, the softly launched beta (test) version of Culture11 hewed closely to the original vision, down to its *Slate*ish design. Poking around the site was a bit like wandering into the Christian rock section of a record store: the bands were recognizably bands, with electric guitars and vaguely countercultural clothing, but there was something ... *different* about them, the musicians just a little too healthy looking to be real rock stars. But there were also more interesting things happening. For a site that took as its starting point a retreat from the political arena, Culture11 actually had a lot to say about the election, and it was generally more eclectic and off-message than what other political publications had on offer as November approached. This had a lot to do with the fact that Culture11's editorial brain trust was made up of people who had little concern for—or at least needed a breather from—the self-immolating *Hindenburg* of movement conservatism. Kuo had proclaimed his own disenchantment in *Tempting Faith*. Friedersdorf was concerned with improving journalism, not creating a permanent Republican majority.

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Political editor James Poulos, a PhD candidate in government at Georgetown who describes his dissertation subject as "the alluring puzzle of the Napoleonic soul," was far too idiosyncratic in his own politics. Arts editor Peter Suderman was a libertarian who in the last frenzied days of the election spent a whole column arguing that voting was stupid. Having no claim to any particular ideological niche, Culture11 tried to corral them all in the same room and get them talking to each other. "People talk about the conservative circular firing squad—I think we see ourselves as a demilitarized zone," Friedersdorf told me. "There is nothing like an agreement on our staff that would allow us to claim a slice of anything." The result, perhaps inevitably, lacked a real sense of identity, but it also offered the closest thing political journalism had to a controlled experiment. Drawing mostly from the gated intellectual community of East Coast–based young political writers, Culture11's contributors were often people who also wrote for more ideologically coherent political magazines, environments that encouraged groupthink. What they wrote for Culture11, which encouraged the opposite, was often much smarter.

When other right-leaning publications were speculating on the legitimacy of Barack Obama's birth certificate, Culture11 offered up a mischievous list of the "Top 11 Fringe Right Arguments Against Barack Obama Becoming President." Number two: "He's not really black." Number one: "He's black."

Culture11's in-house writers also had a gift for whacking their own partisans, with varying degrees of constructive criticism and snark. "Filmmaker Jean Luc Godard famously declared that, to do his job, all he needed was 'a girl and a gun,'" Suderman wrote on the occasion of Sarah Palin's selection as John McCain's running mate, alongside a photo of the Alaska governor posing with a stuffed grizzly bear. "On his hunt for a Vice President, John McCain apparently came to the same conclusion." A month after the election, when even respectable right-leaning publications were expending ink and pixels on the legitimacy of Barack Obama's birth certificate, Culture11 offered up a mischievous list of the "Top 11 Fringe Right Arguments Against Barack Obama Becoming President" (Number two: "He's not really black." Number one: "He's black."). Poulos, the political editor, wrote about Democratic and Republican dynasties with equal acidity: the Clintons were "wily, and probably deathless, political opponents, with an arsenal of depleted-uranium loyalists"; Bush was "a man who thinks in grand words made up of few letters." When Palin, at the apex of her popularity, held a campaign rally in Virginia, he stopped by and was perturbed by what he saw. "In place of a detailed contrast between the GOP's shortcomings and failures and the real change that's promised," he wrote, "the McCain campaign seems content with zingers and chants. Those things are fine and natural ornaments for the election-year tree—but they do require a tree."

This sort of work did not win Culture11 an excess of friends among more tactically oriented conservatives. "One of my proudest moments," Kuo told me, "was when someone at RedState"—the conservative blog that attempted to mount an online purge of the movement's reformists in the last weeks of the campaign—"said, 'We aren't even going to post a link to Culture11.'" After the election, of course, assessing the shortcomings of the Republican Party had become a popular pastime. In late November, I ran into Poulos and Friedersdorf at a post-election panel discussion cohosted by the National Review Institute and Hillsdale College—a small school in Michigan whose student body was ranked the most conservative in the country by the *Princeton Review*—at the Hyatt in downtown Washington called "The Future of Conservatism." They were sitting at a table in the back of the room, intermittently taking notes on pads of hotel stationary, as the panelists—*Atlantic* senior editor Ross Douthat, *National Review* editors Ramesh Ponnuru and Jonah Goldberg, a token libertarian from the Cato Institute, and a professor from Hillsdale—took turns diagnosing the movement's ills.

"Conservatism, we're told," intoned the Hillsdale professor, the kind of stiffly formal young man whose cheeks are simply waiting to become jowls, "is an 'ism' that soon may be a '*was*-m.'" A mixture of polite laughs and groans wafted through the room. The audience sat around tables scattered with dishes of hard candies, the kind that grandmothers keep in their kitchen drawers, and leafed idly through copies of the December 1 issue of *National Review*, the cover of which was a picture of a sunrise overlaid with the word RENEWAL.

Goldberg, the author of *Liberal Fascism: The Secret History of the American Left From Mussolini to the Politics of Meaning*, spoke last. "One of the things conservatives need to do for the future of conservatism," he advised,

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"is deal with the issue of youth, and deal with the issue of the culture a lot better." Conservatives had a problem with young people, he said, and it had to do in part with the modern college experience, which had come to embody the liberalism and libertinism that his magazine had famously stood athwart for fifty years. "I think that the end of history for liberalism today is that we're all going to become like one vast college campus at the end of time—where the only crime is to hurt somebody else's feelings," he continued. Among college students, "the worst thing you can do is *harsh someone else's buzz*. And the second they step off the moving car of their college experience, and actually have to walk—it's like one of those moving walkways in airports, when you get off all of a sudden, 'Whoa, it's hard to walk!'" The audience laughed appreciatively. "Once they get off, and realize they need jobs and need to actually pay rent and all that, they get a lot more conservative very quickly."

When Goldberg got to the line about the moving sidewalk, Friedersdorf and Poulos looked at each other. Poulos made the finger-twirling "crazy" gesture. When *New York Times* columnist David Brooks, the panel's moderator, opened up the floor for questions, Poulos walked briskly up to the microphone.

"Hi gentlemen," he began. "Um ... in the interest of fun I'm going to taunt the panel first, and then try to justify running the gauntlet by phrasing it as a serious question." Poulos was wearing a charcoal suit and a brightly colored tie, which stood out in the ballroom's sea of navy blue and khaki but was subdued by his standards, which tend to run toward things like monochromatic three-piece suits and velvet jackets. (He also has sideburns that are shaped like New Hampshire and almost as big; the combination of muttonchops and fine tailoring suggests a character in a Victorian political cartoon, or one of the white guys in *Superfly*.) Poulos's writing was prone to densely cerebral sentences that unfurled over the course of a whole paragraph, and he addressed the panel in a similar tone. "One concern that I and others might have," he began, "is that conservatives are particularly good at doing a kind of cultural criticism that results in inaccurate or radically incomplete observations about things going on in this crazy culture of ours. So, just sort of moving quickly down the line, right? Like, Jonah gives us a portrait of a college campus where everything is taken care of and no one buzzes anyone else's vibe—but of course, you know, the dark side of college life is that *everyone* is buzzing everyone else's vibe in private—terrible breakups, attempted suicides, school counseling, and threesomes gone wrong." *Threesomes gone wrong*. The Hillsdale professor looked like someone he had never met had just walked up and thrown a glass of water in his face. Several of the other panelists were friends or acquaintances of Poulos's, and they looked mildly amused as he moved on to the great conservative shibboleth: "The valiant working class, culturally robust and upright Americans? Well, yeah, but a lot of these people also enjoy Cheetos and watching *Family Guy*.

"In the interest of being more than provocative," he said, getting to his serious question, "are we ever going to be able to address the question of cultural necessitarianism without being confident that we're getting our cultural criticism right?"

Stripped of its woolly academese, what Poulos was asking was, can conservatism properly push back against a popular culture that it doesn't really understand? How does a movement that yearns for the values of the past confront a culture that prizes novelty? This was a problem that had bedeviled modern American conservatism since Buckley first inveighed against the Beatles in his syndicated column. It was something that Poulos, who had dabbled in screenwriting and indie rock (his band was called the End of History) in Los Angeles before moving to Washington, had kicked around in his own writing. "The right has a lot to learn from people who are completely outside of it," he explained later. If they did that, they "might actually win some latecomers, people who have lived unhappy or unsatisfying lives. And if they show up at the door of the right and say, 'Gosh, my super-transgressive life is sort of unrewarding, maybe I've exhausted this mine of self-indulgence and personal freedom and saying 'fuck the man,' and the right is completely disinterested in engaging those people, I think they're missing out."

What Poulos was asking was, can conservatism properly push back against a popular culture it doesn't really understand? This was a problem that had bedeviled modern American conservatism since William F. Buckley first inveighed against the Beatles.

Poulos was more pontificator than reporter, but this line of thinking dovetailed with Friedersdorf's belief in sending conservative writers out to experience the world. If Poulos wasn't quite the Wolfean observer that his coeditor was looking for, his occasional pieces about his time in Los Angeles arguably came closer to Frieders-

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dorf's ideal than anything else Culture11 published—they were biting but empathetic, and tapped the unexamined is-this-all-there-is melancholy that underlies the irony-heavy hipster milieu. "Ambiguity was cultivated and non-commitment a social compact," he wrote in one piece about the L.A. scene. "A blurring of the basic facts took shape as a habitual coping mechanism."

Beyond these forays, though, the cultural coverage that had been Culture11's original raison d'être proved to be a bit tricky. The let's-see-what-sticks approach with which the site was launched had produced contradictory ambitions—Carter's socially conservative safe zone, Friedersdorf's electric Kool-Aid conservatism—which, while not entirely incompatible, did make it a curious beast; there was a transparent absurdity to a journalistic enterprise with George Bush Sr.'s drug czar at the head of its board of directors attempting to take stylistic cues from *Fear and Loathing in Las Vegas*. The goal of providing conservative journalists a place to write for their fellow conservatives about cultural subjects gave the lesser features and reviews by young writers the sheltered-workshop aura of a college newspaper, and occasionally dipped into the kind of "these kids today" cultural commentary that right-of-center magazines have never been short of, with Iain Murray—one of the Competitive Enterprise Institute's in-house authorities on climate change denial—harrumphing that "it seems impossible to find a show that airs after 8 p.m. on any of the major networks that is not obsessed with sex." Friedersdorf turned out to have been right when he observed that the ranks of out-and-out conservative journalists who did this kind of thing well were pretty thin—when he trolled for story pitches on Web sites that hungry freelancers frequented, such as Media Bistro, he was surprised to find that most of what he got came from writers who fell further left on the political spectrum (he published them anyway). And as some of the site's contributors grew increasingly adventurous, one of the principals got skittish. In December, when a pseudonymous contributor to Ladyblog, Culture11's "conservative feminist" forum, posted an entry titled "In Defense of the 'Hook-up Culture,'" Carter yanked it off the blog. ("I didn't like the content," he later said. "We wanted dissent within the conservative perspective, but to me that fell out of line.") The move prompted an in-house uproar and an apologetic response from Kuo, reinstating the post but also averring that "Culture11 is a conservative site. We see the world through a culturally conservative lens. As such the post isn't something that anyone here particularly agreed with. We don't believe the hookup lifestyle is good for anyone." ("I think our disagreements were healthy disagreements," he told me later.)

When a contributor to a Culture11 blog posted an entry titled "In Defense of the 'Hook-up Culture,'" the site's managing editor yanked it down. "We wanted dissent within the conservative perspective," he said later, "but to me that fell out of line."

In a sense, Culture11 was running up against the natural limits of its niche. "We had expanded so much that I didn't even know who was writing for us anymore," Carter said. "We were getting a lot of flack from conservatives—'What's conservative about your site?'" While Carter was enthusiastic about Culture11's coverage of television—the last medium still largely regulated by federally imposed decency standards—he had come to the conclusion that, faced with the explicitness of contemporary music, there was a limit to what the site had to say. "How do you talk about something like gangsta rap from a conservative perspective?" he said. "Are you going to critique it, or just disagree with it?" Friedersdorf tried gamely to square that circle in a piece exploring his conflicted feelings about dancing to Lil Jon at a wedding, but it was an essay that could have been written only so many times.

By the time of the Ladyblog flap, Culture11 had been around for four months but had yet to officially launch; it was still in the test tube stage. No one had spent a dime on marketing or publicity, and the articles published there seemed to mostly reach a relatively closed circle of similarly reform-minded conservative journalists. Earlier in the year, Kuo had lined up a first round of funding for his project from investors including former presidential hopeful Steve Forbes, a West Coast venture capitalist firm, and a pair of conservative real estate moguls (he and Bennett had put up some of their own money, too). He had planned to have more funding in hand by the late fall, and officially debut Culture11 with some fanfare shortly after the election, but by mid-October the collapse of the financial markets had rendered that an unlikely prospect. With the future unclear, he shifted money from the nascent social networking wing of the project—since its similarly quiet debut, it had acquired about 5,000 members—into editorial to keep the editors' paychecks coming. In early January, he was still hoping for a debut in February, but by the end

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of the month that hope had dimmed. After a last-ditch attempt to raise some funds from his board of directors fell apart, Kuo called his staff—Washington had been hit with a snowstorm and the editors had stayed home from the office that day—to announce that Culture11 was out of money, and that the board had voted to lay them off and close down the following week. "At the end of the day, sometimes you run up against something bigger than what you can overcome," he told me.

It was a grimly funny coincidence that around the time Culture11's financial well was running dry, another Web site sharing its subject matter debuted to much greater fanfare in the right-wing media than Kuo's project ever received: Big Hollywood, an entertainment and politics blog created by Andrew Breitbart, a conservative Los Angeles–based Internet entrepreneur who helped launch both the Drudge Report and Huffington Post. Beneath an angry vermillion-colored banner, the blog offers recurring features like the "Celebutard of the Week"—tracking the latest vapidly liberal political utterances from the likes of Cher—and clips of the best conservative moments in film interspersed with rote breaking news from the entertainment industry. It's supposed to eventually host cultural musings from such notable film critics as House Minority Leader John Boehner and Minority Whip Eric Cantor; commenting on a scene in the new thriller *The International* in which the characters shoot it out in the Guggenheim Museum, one Big Hollywood contributor coos approvingly, "I love seeing modern (phony) art destroyed."

But for all the bluster of all-caps headlines like "GLOBAL WARMING PROPAGANDA SINKS 'UNDER THE SEA 3D,'" it's a far less courageous site than the comparably nonconfrontational Culture11; beneath the patina of combativeness, it's really just a support group for 24 fans. What Big Hollywood does isn't criticism, or reporting—it's ideological accounting. And its failure to get its arms around the culture in which it is swimming is symptomatic of the broader failures of the conservative movement. For decades, the Nixonian notion of the silent majority created a strong temptation for conservatives to simply wall off the parts of society that they didn't like or understand, secure in the belief that there were more people on their side of the wall. Ballot for ballot, this may have been true in the 1970s and '80s, and even into the '90s. But if you build a border fence, it's difficult to see what's happening on the other side of it. Which is why in 2008 the Republican Party awoke to a world in which it was losing every politically important demographic battle and had essentially ceded the field on issues like education, where it hadn't contributed a new policy idea since the school voucher, and energy, where the best plan it could come up with was a renewed push for offshore drilling. Big Hollywood's mania for ideological categorization stems from the same mind-set—shared even by some of the smarter reform conservatives—that produced the Bush administration's disastrous loyalty-over-performance hiring practices: the instinct to see everything, from the Sundance Film Festival to NASA's atmospheric research programs, as just another battleground. What Culture11's editors got right was the observation that, regardless of what you think of the world as it is, you can't figure out how to wrestle with it until you understand what's actually happening in it.

One evening a few weeks after his Web site went bust, Kuo called me with news: earlier in the day he had met with a group of prospective new investors, and there appeared to be a good chance of resurrecting Culture11. As of this writing, it's still unsettled, and I wish him well—but I'm also a little ambivalent about it. Because I think Friedersdorf was right in the first place. Tom Wolfe didn't need a conservative magazine to do what he did—in fact, he succeeded largely because he wasn't writing for one. Young journalists, of course, work with the opportunities that are available to them, but I would have preferred to see Culture11's best talent writing for the actual *Slate* (which does, after all, publish plenty of conservative writers) rather than a self-consciously right-of-center version of it. With their online sanctuary gone, I was looking forward to seeing their bylines elsewhere, challenging and being challenged by editors and institutions of other stripes.

The notion of the silent majority created a strong temptation for conservatives to simply wall off the parts of society that they didn't like or understand. But if you build a border fence, it's difficult to see what's happening on the other side.

On the other hand, if new investors revive Culture11 and give it a proper launch, it will be an opportunity to find out if Kuo was right: whether there is a niche for an enterprise like Culture11, or whether right-leaning readers will opt in greater numbers for comforting cocoons like Big Hollywood. In the end, the market will decide—and what could be more conservative than that? WM

Charles Homans is an editor of the *Washington Monthly*.

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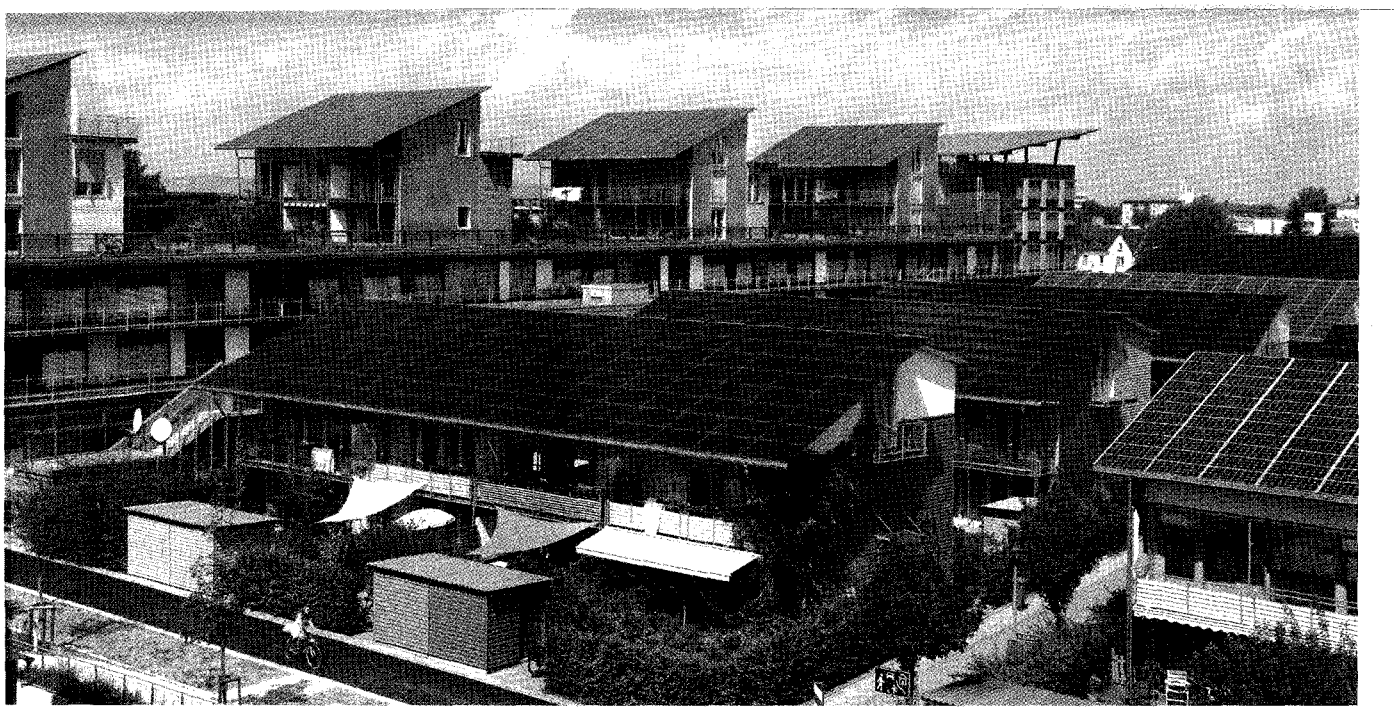

Courtesy of Rolf Disch

The Rooftop Revolution

A little-known policy is turning sleepy central Florida into a green energy hub. Could it do the same for America at large?

By Mariah Blake

This winter, as Congress was scrambling to pass the stimulus package, the bottom fell out of the renewable energy sector—the very industry that lawmakers have held out as our best hope of salvaging the economy. Trade groups like the American Wind Energy Association, which as recently as December was forecasting "another record-shattering year of growth," began predicting that new installations would plunge by 30 to 50 percent. Solar panel manufacturers that had been blazing a trail of growth announced a wave of layoffs. Some have since cut their workforces in half, as stock prices tumble and plans for new green energy projects stall.

But there is one place where capital is still flowing: Gainesville, Florida. Even as solar panels are stacking up in warehouses around the country, this city of 120,000 is gearing up for a solar power boom, fueled by homegrown businesses and scrappy investors who have descended on the community and are hiring local contractors to install photovoltaic panels on rooftops around town.

One of those investors is Tim Morgan, a tall fiftysomething man with slicked-back hair and ostrich-skin boots who owns a chain of electrical contracting companies. His industry has been hit hard by the downturn, but he has a plan to salvage his business, which he explained over a drink at the Ballyhoo Grill, a gritty Gainesville bar with rusty license plates nailed to the wall and Jimmy Buffett blaring on the jukebox. Morgan intends to rent roof space from eighty Gainesville businesses and install twenty-five-kilowatt solar generating systems on each of them, for a total of two megawatts—a project that would nearly double Florida's solar-generating capacity. He estimates the venture will cost between $16 million and $20 million and bring in $1.4 million a year. Already, he has lined up financing, found local contractors to do the installation, and staked claims to the rooftops of at least fifty businesses. "And we're just one tiny player," he told me. "Look around. You can see how fast this thing is going to move."

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Indeed, around Gainesville similar projects abound. Paradigm Properties, a residential real estate company, plans to install photovoltaic arrays on fifty local apartment buildings and its downtown headquarters. Achira Wood, a custom carpentry outlet, is plastering the roof of its workshop—roughly 50,000 square feet of galvanized steel—with solar panels. Interstate Mini Storage is doing the same with its sprawling flat-roofed compound. Tom Lane, who owns ECS Solar Energy Systems, a local solar contractor, told me he's planning to expand his staff from eleven to at least fifty. "The activity we've seen is just explosive," he said. "I've been in the business thirty years and I've never seen anything like it."

Why is the renewable energy market in Gainesville booming while it's collapsing elsewhere in the country? The answer boils down to policy. In early February, the city became the first in the nation to adopt a "feed-in tariff"—a clunky and un-descriptive name for a bold incentive to foster renewable energy. Under this system, the local power company is required to buy renewable energy from independent producers, no matter how small, at rates slightly higher than the average cost of production. This means anyone with a cluster of solar cells on their roof can sell the power they produce at a profit. The costs of the program are passed on to ratepayers, who see a small rise in their electric bills (in Gainesville the annual increase is capped at 1 percent). While rate hikes are seldom popular, the community has rallied behind this policy, because unlike big power plant construction—the costs of which are also passed on to the public—everyone has the opportunity to profit, either by investing themselves or by tapping into the groundswell of economic activity the incentive creates.

Though Gainesville is the first to take the leap, other U.S. cities are also moving toward adopting feed-in tariffs. Hawaii plans to enact one this summer, and at least ten other states are considering following suit. Among them is hard-hit Michigan, where Governor Jennifer Granholm has promised that the policy will help salvage the state's economy and create thousands of jobs by allowing "every homeowner, every business" to become "a renewable energy entrepreneur." There is also a bill for a federal feed-in tariff before Congress.

Could this approach help revive our renewable energy market, and give a needed jolt to the U.S. economy? There is reason to believe it could. In Germany, which pioneered the modern feed-in tariff, it has given rise to the world's most vibrant green energy sector. More than forty countries, from Nicaragua to Israel, have followed Germany's lead, often with dramatic results. Study after study has shown that not only do feed-in tariffs deliver more renewable energy than other market incentives, they do so at a lower cost. "People hesitate to call anything a panacea," says Toby Couture, an energy and financial markets analyst at the Department of Energy's National Renewable Energy Laboratory. "But if you're interested in creating jobs, getting capital flowing, and expanding renewable energy, feed-in tariffs get the job done—often more cost effectively than other policies."

To understand why feed-in tariffs are potentially revolutionary, you first have to understand how they differ from the system we've been using to drive investment in renewable energy so far. For the last fifteen years, the United States has relied on a patchwork of state subsidies and federal tax breaks—mostly production tax credits for wind power, which let investors take write-offs for the energy produced. When Wall Street was riding high on mortgage-backed securities, this made green energy an appealing option for big banks, which funneled billions of dollars into sprawling wind farms as a way of lowering their taxes. But when the market collapsed and corporate profits dried up, so did the incentive to invest. Since last year, the number of tax equity investors—mainly big investment banks—sinking money into wind farms has dwindled from as many as eighteen to four, and the remaining players have scaled back.

This tax-based system has other drawbacks as well. Because Congress has to renew the tax credits—and has often failed to do so—renewable energy is a risky market. Frenzied bursts of investment are followed by near-total collapse, a pattern that has hampered the growth of our domestic green manufacturing sector. Also, tax incentives (and the quota systems in place in about half of U.S. states) end up favoring large-scale projects, mostly monster wind farms concentrated in remote places like the Texas panhandle. This has been lucrative for the companies, like GE and Siemens, that build them, but of limited economic benefit to local communities. What's more, a lot of energy is wasted transporting power from the sparsely populated areas where it's produced to the cities and coasts—assuming it can be transported at all. Transmission lines are in such short supply that turbines (and occasionally entire wind farms) sometimes have to be shut down because of bottlenecks in the grid.

Even as solar panels are stacking up in warehouses around the country, Gainesville, Florida, is gearing up for a solar power boom, fueled by homegrown businesses, scrappy venture capitalists, and an innovative financing policy with a clunky name: "feed-in tariffs."

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Feed-in tariffs promise to solve many of these problems by encouraging small, local production, driven not by Wall Street banks but by ordinary entrepreneurs—a system that boosts efficiency and fortifies local economies.

Feed-in tariffs are not a new idea. In fact the United States tried them once before, in the 1970s. At the time the global economy was in shambles, the result of OPEC choking off the world's oil supply. In a bid to ward off future oil shocks, Congress passed the Public Utility Regulatory Policies Act of 1978 (PURPA), which required power companies to buy electricity from small renewable generators. This spurred a green energy boom, especially in California, which offered producers long-term contracts at rates that were tied to the then-soaring price of natural gas (specifically, they were linked to future-cost projections). Virtually all of the renewable generating power the state has today came online under the policy. More importantly, the technical breakthroughs made in California during this era helped give rise to the modern renewable energy industry.

But this approach also had some glaring flaws, which came into focus in the early 1990s, when the price of natural gas tumbled. Rates for renewable energy sank so low that there was no incentive to invest, and the industry collapsed. Power companies were also stuck with high-priced contracts, which stirred a well of public resentment. Several key states, including California, rolled back the contract requirements, essentially taking the teeth out of PURPA.

The main incentive driving investment in renewable energy in the United States has been federal tax breaks, which rely on big companies having multimillion-dollar tax bills. The upshot? When Wall Street collapsed and corporate profits dried up, so did the incentive to invest.

But not every nation had the luxury of cheap, abundant fossil fuels. Even in the 1980s and '90s, when the United States was flush with energy, Germany was struggling to meet its demand—a by-product of its scant oil and gas reserves and the groundswell of opposition to nuclear power after the Chernobyl meltdown. One of the solutions the country settled on was dusting off the feed-in tariff model. The original German bill, passed in 1991, only created an incentive for wind and hydropower. Still, it doubled the share of renewable electricity the country produced, from 3 to 6 percent, over the next nine years. In 2000, the incentive was extended to all renewable energy sources. The pricing structure was also overhauled so rates were tied to the cost of production and varied by energy source—a key point of distinction from PURPA. The aim of the policy was to cultivate a broad enough portfolio of renewable options that Germany could one day replace fossil fuels entirely, and do so outside conventional energy markets. "Big power companies have too many vested interests against renewable energy," explains Hermann Scheer, a member of the German parliament, who championed the policy. "They will never be the driving forces behind its development."

The policy has allowed Germany not only to meet but to exceed its renewable energy goals. Initially, the aim was to get 12 percent of its electricity from renewable sources by 2010. But it passed that milestone three years early, and has since reached the 15 percent mark—the most rapid growth seen in any country. By mid-century, Germany aims to increase that share to 50 percent. Already, the nation, which is about as sunny as Juneau, Alaska, is home to almost half the world's solar generating capacity, and churns out more solar power than any country except Japan. Although it is half the size of Texas, and far less windy, it is also vying with the United States for the number one spot when it comes to generating capacity for wind power.

The driving forces behind this boom are local communities and small entrepreneurs. If you travel the country top to bottom, you'll see the signs of this everywhere, from the drizzly port of Hamburg, where wind turbines are tucked between stacks of rusty shipping containers, to villages in the Black Forest, where farmers are ripping out ancient waterwheels and replacing them with modern turbines. In Freiburg, a walled medieval city full of cobbled streets and Gothic spires, there are roof-mounted photovoltaic panels everywhere, from churches and schools to train stations and factories, even the local soccer stadium. Some residents have also found more creative ways to harvest energy. Among them is local architect Rolf Disch: his home, which looks like a squat upside-down rocket, has a billboard-sized solar array on the roof and wrap-around balconies with liquid-filled railings that double as solar heat collectors. It also rotates to follow the sun. All told, the building generates five times more electricity than it uses. Disch has also designed solar gas stations and a suburban housing development, where the homes act like mini power stations. But he is careful to note that his clients are not hippies or eco-rebels. "These are doctors, teachers, engineers," he told me when I visited Freiburg last June. "In other words, ordinary people."

What inspires ordinary Germans to invest in renewable energy? Part of the answer is that it's about as safe as government bonds—and brings a better return. Under the

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German system, renewable energy producers are given long-term, fixed-rate contracts, designed to deliver a profit of 7 to 9 percent. This makes green energy a secure bet for both investors and banks.

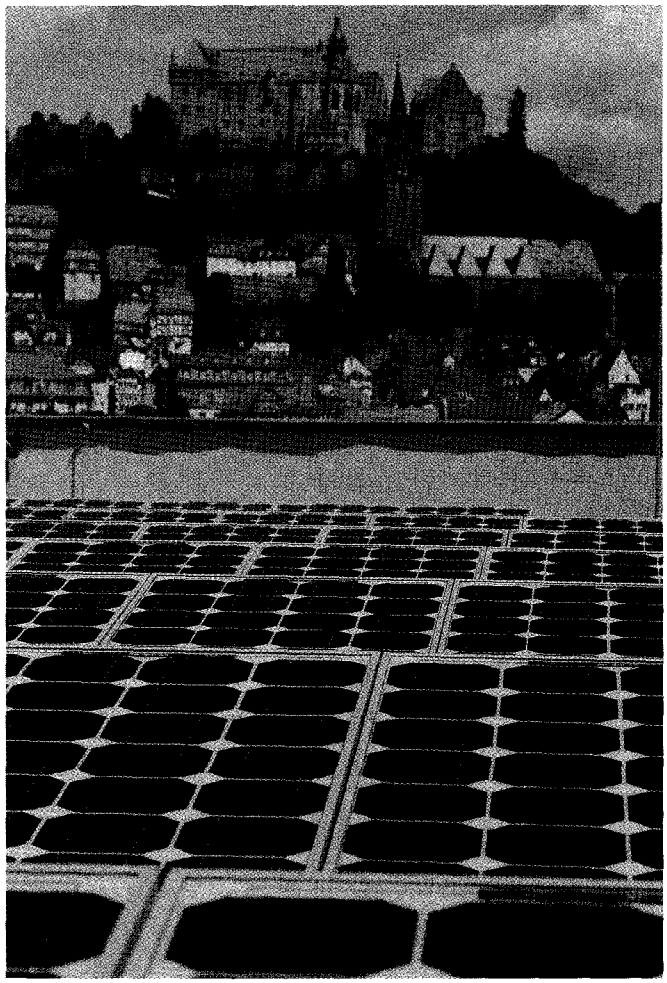
The German system contains another ingenious feature: every year, the rate paid for new contracts falls, so a company that installs a large rooftop solar array this year will lock in a rate that is nearly 20 percent higher than one that waits until 2011. This has two salutary effects. First, it creates an incentive for would-be entrepreneurs to get in the game as soon as possible, thereby spurring a rush of investment (which helps explain why Germany was able to meet its renewable energy targets three years early). Second, it forces the green energy sector to innovate. If they want to stay in business and hold on to their margins, manufacturers have no choice but to continually seek out new efficiencies.

This combination of a fast-growing market and rapid innovation has turned the country into a green industry powerhouse. Germany is the leading destination for green capital, with $14 billion invested in 2007 alone. It is also a frontrunner in green job creation. Some 300,000 people work in the nation's renewable energy sector today. By 2020 green technology is expected pass the auto and electrical engineering industries to become the nation's top employer, with more than 700,000 workers. One of the forces driving this growth is exports. In fact, many of the windmills and solar panels that are cropping up from New York to the Texas panhandle are made in Germany.

The economic benefits of this green tech boom have reached into the poorest corners of the country, including ragged patches of former East Germany. The region between Frankfurt-Oder and Dresden was once as grim as the drabbest outpost in the American Rust Belt. But in recent years, a vibrant green energy corridor, known as "solar valley," has sprung up amid the abandoned coal mines and shuttered factories. Thousands of workers from the defunct East German semiconductor industry (some of whom had languished for years on unemployment rolls) are now gainfully employed in solar panel factories.

Most importantly, although Germany's economy has been devastated by the downturn, its green energy sector continues to thrive. In fact, Ernst & Young recently ranked the nation number one on its index of most attractive markets for renewable energy investment. "Just as cash is king," the report found, "feed-in tariffs are favored by investors," especially in uncertain financial times.

You might expect that a system like this—one that allows countless independent producers to sell electricity at premium rates—would come with a hefty price tag. But that is not the case. Studies have shown that even though German-style feed-in tariffs encourage the use of relatively expensive forms of renewable energy, such as solar power, they produce power more cheaply on a watt-for-



Sun King: Germany is now home to almost half the world's solar generating capacity, thanks to feed-in tariffs.

ASSOCIATED PRESS

watt basis than other renewable energy policies. This is because there is less investment risk, and less risk means investors can get lower-interest loans for generating equipment. This is one reason installing a solar panel in Freiburg costs less than it does in San Francisco. Renewable energy producers are also willing to accept lower profit margins because the returns are all but guaranteed. In contrast, under other systems utilities are forced to pay hefty risk premiums. This is particularly true of the quota systems (known as renewable portfolio standards) that are in use in about half of U.S. states and some European countries.

These findings are not lost on Germany's neighbors. To date, at least eighteen of the European Union's twenty-seven member states—along with some twenty-five countries, cities, and provinces elsewhere in the world—have adopted feed-in tariffs. Mario Ragwitz, who is spearheading a long-term EU study comparing renewable energy incentives, says three-quarters of the renewable electricity that the bloc produces each year is a direct result of this trend. "Almost everything Europe has when it comes to clean energy stems from the feed-in tariff policy," he says. "No other system compares."

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In some nations where feed-in tariffs have reached critical mass, there is evidence that they have actually driven down the overall price of electricity. This may seem counterintuitive—after all, renewable energy is more expensive on average than, say, coal power. But the price of electricity is often driven by natural gas, a costly and volatile fuel that is frequently used to meet peak power needs. If you have a large volume of renewable energy (particularly less-expensive wind power) you can cut your use of natural gas, bringing prices down across the board.

In the United States, tax credits and quotas are still the policies of choice. But this may be changing. While the stimulus package expands existing incentives, it also has some novel twists. Namely, in lieu of tax write-offs, companies that break ground on renewable energy projects (such as solar, wind, and geothermal plants) in the next two years can recover 30 percent of their project costs from the Treasury in the form of direct grants. This opens the renewable market to a wide range of players, rather than just big companies with outsized tax bills.

The fast-growing market and rapid innovation that come with the feed-in tariff have turned Germany into a green industry powerhouse. Many of the windmills and solar panels that are cropping up from New York to the Texas panhandle are made in Germany.

Investors and industry analysts have hailed this as an enormous step forward—one that, in concept, could unclog the pipelines of capital and breathe life back into the renewable sector. "Theoretically, this approach could really supercharge the industry," says Cai Steger of the Natural Resource Defense Council's Center for Market Innovation. But they are divided over just how much investment it will attract. This is because, while the policy broadens the pool of potential investors, it doesn't thaw the frozen credit markets, which have made it difficult to get financing for renewable projects (except in places where the return is guaranteed). Also, although the green energy measures in the stimulus package are longer term than past incentives (the production tax credits were extended for three years instead of one, as has often been the case in the past) they don't entirely fix the quandary of market instability. Will the industry collapse again when the Treasury grants expire in 2010? Nobody really knows. Moreover, analysts expect the system will continue to favor large-scale projects. This means it is unlikely to spur the kind of small, local production, widespread economic development, and rapid job growth seen in places like Germany.

On this front, some lawmakers would like to see America give Europe a run for its money. "Why should Germany be dominating all this job creation?" Rep. Jay Inslee of Washington told me when I visited him on Capitol Hill in January. "It's time for us to get in the game." Last June, the Democratic congressman, who has long been pushing green energy as an engine of economic growth, introduced a bill for a federal feed-in tariff —part of a surge of interest in the policy reaching from California to Maine. In recent months, there has been a flurry of white papers, reports, and conferences on the topic. Interest is also growing in research circles. Toby Couture of the National Renewable Energy Laboratory says that six to eight months ago many of his colleagues didn't even know the policy existed. Now, he adds, "Everyone on my team is asking, 'Why aren't we doing this?'"

Congress, meanwhile, is clearing away some of the logistical stumbling blocks, like our nation's aging, patchwork electric grid, which could make the intermittency of renewable energy difficult to manage, especially if large quantities come online at once. The stimulus package helps solve this problem by providing $11 billion to modernize our energy infrastructure and develop a "smart grid," with advanced sensors and distributed computing capabilities, so it can instantly reroute power to meet demand or avoid system overloads. This should pave the way for a better integration of renewable electricity—and, perhaps, open the door to strong, consistent policy that channels America's entrepreneurial drive into renewable energy.

The drive is there waiting to be unlocked. Just ask Tim Morgan. As the sun dipped behind the live oaks outside Ballyhoo, and "Margaritaville" blared over the speakers, he let me in on the grander scheme behind his Gainesville venture. As he trolls the city for rooftops where he can install photovoltaic arrays, he's purposely gravitated toward chain stores. That way as other cities and states adopt feed-in tariffs, he'll have ready-made inroads. "I wanted the system to be scalable, so I can expand," he explained. "If the incentives are right, there's no reason there couldn't be solar panels on every Walgreens and Sam's Club across the country."

Will Tim Morgan turn out to be the Sam Walton of solar power? Who knows. But hearing his plan, I definitely had the sense he was a man on the ground floor of something big. WM

Mariah Blake is an editor of the *Washington Monthly*. This story is part of a "Big Ideas" series published in partnership with the New America Foundation.

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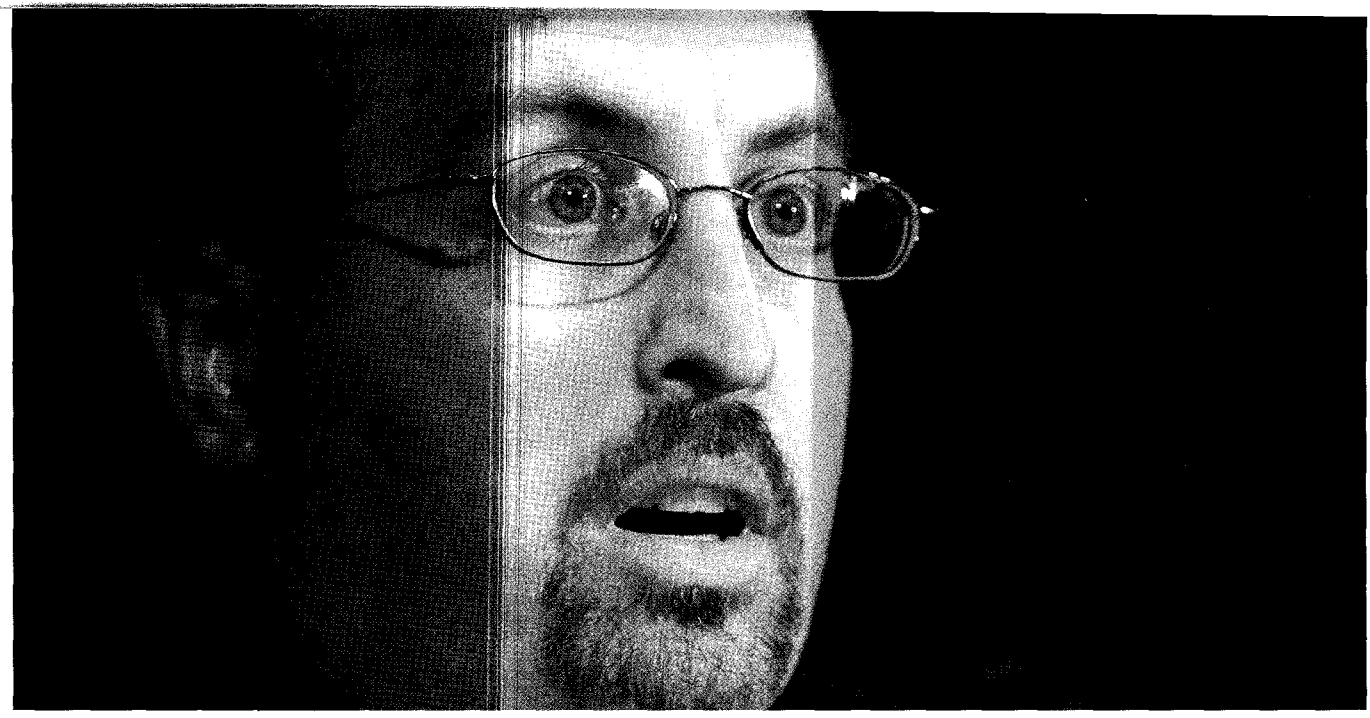

I Fought the Law: Former Bush Justice official Bradley Schlozman tries to explain to the Senate Judiciary Committee why he packed the department with conservatives.

Getty Images

Tipping Back the Scales

How Obama can reverse justice's long slow slide to the right.

By Rachel Morris

In 2003, a thirty-two-year-old lawyer named Bradley Schlozman became deputy assistant attorney general of the Civil Rights Division of the Department of Justice. He wasn't very popular—career lawyers called him "The Schloz" behind his back. But that didn't matter, because Schlozman was their boss, and he didn't like them either. Voting rights attorneys were "mold spores," he complained to an associate. "My tentative plans are to gerrymander all of those crazy libs right out of the section." What he wanted instead was to recruit some "good Americans."

So Schlozman took control of the hiring process, screening all of the applications for career positions. Senior managers in the department soon spotted a pattern in the resumes he selected. His candidates were often poorly qualified—one was only a paralegal—but they were affiliated with conservative groups like the Federalist Society, the Heritage Foundation, or the Republican National Lawyers Association. In fact, one senior lawyer wondered whether Schlozman knew that it was illegal to hire or fire career lawyers for political reasons—he kept appending applications with chirpy notes like: "this has lib written all over it. let's discuss," or, "just spoke with [the attorney] to verify his political leanings and it is clear he is a member of the team." In particular, Schlozman frowned on candidates who had experience with civil rights organizations. "When we start asking about what is your commitment to civil rights ... how do you prove that? Usually by membership in some crazy liberal organization or by some participation in some crazy cause," Schlozman explained to a senior staffer in a voicemail message. "I just want to make sure we don't start confining ourselves to, you know, Politburo members because they happen to be a member of some, you know, psychopathic left-wing organization designed to overthrow the government."

Schlozman's influence wasn't confined to personnel—it infected policy, too. The division vets election legislation to

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make sure that it complies with the Voting Rights Act, and Schlozman approved a Georgia voter identification law and Tom DeLay's redistricting plan for Texas over the objections of career staff. Both plans benefited Republicans at the polls, but (as courts later found) they illegally disadvantaged minority voters. Morale in the division plummeted, and in 2005, nearly 20 percent of the career staffers left. The following year Schlozman moved on as well, to become a U.S. attorney in Missouri. He wrote to a friend that he missed "bitchslapping" the voting rights attorneys, but he was proud of what he'd accomplished in Washington. An investigation by the Justice Department's inspector general later found that Schlozman had violated civil service laws, and that sixty-three of the ninety-nine attorneys he played a part in employing were known to be Republicans or conservatives.

After leaving his post at the Justice Department, Bradley Schlozman wrote to a friend that he missed "bitchslapping" the voting rights attorneys, but he was proud of what he'd accomplished in Washington. An investigation later found that Schlozman had violated civil service laws.

Schlozman's ham-fisted quest to pack the Justice Department with Bush loyalists was the crass echo of a project that began nearly twenty-five years ago. When Edwin Meese became attorney general in 1985, he aimed to change America's legal culture so that Ronald Reagan's agenda would thrive long after he left the White House. Meese turned the Justice Department into an ideological patronage machine, providing a generation of young conservative lawyers with the government credentials and intellectual tools they would need to transform American jurisprudence.

The cronyism and ineptitude that pervaded the Justice Department in the past eight years may have dealt this project a mortal blow—thanks to the Schloz, a stint in the Bush DOJ will probably not be considered a stepping stone to greater things. But even if the conservative legal movement advances no further, its successes will reverberate for years to come. Republican appointees now comprise more than 60 percent of appeals court judges, with majorities on ten of the thirteen appellate courts, while Democratic appointees control just one. Many of these Republican appointees are not moderates or pragmatists, but talented, unbendable conservatives. A study by the law professor (and now Office of Management and Budget official) Cass Sunstein found that the judges appointed by Republican presidents from Reagan onward were more consistently conservative in their rulings than those appointed by Eisenhower, Nixon, or Ford. Already the Supreme Court has lurched to the right since the arrival of John Roberts and Samuel Alito, both Reagan DOJ alumni.

Since Barack Obama won the election, many have wondered what he will do to repair the damage that Schlozman and his allies inflicted on the DOJ's integrity. But there is another important question to be asked. Meese's inventive use of the Justice Department ultimately set American jurisprudence on a rightward course. Could Obama use his Justice Department to turn it back?

The story of how conservative lawyers extracted themselves from the wilderness is often cast as a sinister tale, as if the Federalist Society were an affiliate of the hooded and robed cabal that Tom Cruise infiltrates in *Eyes Wide Shut*. Steven Teles, a political scientist at Johns Hopkins University and a fellow at the New America Foundation, offers a more rational take in *The Rise of the Conservative Legal Movement*, and in a new article in *Studies in American Political Development*. However, with Alberto Gonzales's blank stare lingering in the mind's eye, Teles's assessment still sounds quite outlandish: he suggests that the real secret of the movement's success was its thirst for ideas and intellectual debate.

The story begins in the 1970s, with conservatives incensed by the dramatic changes wrought by Earl Warren's Supreme Court: a stronger federal government, school busing, *Miranda* warnings, and the concept of a right to privacy. Nixon's election was supposed to end the primacy of these "activist judges," but on that count, his Supreme Court appointments failed miserably. Harry Blackmun drifted so far left that he wrote the majority opinion in *Roe v. Wade*; and in the end Warren Burger's Court only continued what Earl Warren had started. At around the same time, the governor of California, Ronald Reagan, was developing an intense antipathy for the liberal legal groups that persistently challenged his welfare reforms with almost no conservative opposition. Republicans realized that their electoral victories were hollow if they could not protect their policies in the courts.

There was no quick fix for this predicament. In the early decades of the twentieth century, the legal establishment had been a bastion of WASPish Republicans. But then the New Deal created a generation of liberal government attorneys who spilled into the upper echelons of private practice and prestigious law schools. Over the next twenty years, they transformed the character of the legal profession. By the 1970s, conservatives were a minority presence in the elite legal institutions that fed government and the judiciary and the public interest law firms. The culture of the top law schools was decidedly liberal. When the Nixon administration tried to "defund the left" by stripping public interest law firms of their tax-

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deductible status, the American Bar Association rallied its forces to defeat the plan.

Conservatives tried to form their own public interest law firms to combat the likes of the American Civil Liberties Union, but that didn't work very well. In 1979, a lawyer named Michael Horowitz explained why, in an influential report for the Scaife Foundation. Conservative lawyers, Horowitz observed, lacked a coherent legal philosophy to match the liberal conception of rights. By casting their positions as part of an American struggle for social justice, liberals were operating on a "higher moral plane." This won them sympathy from the press and a steady supply of gifted, idealistic attorneys. "Nobody has sufficiently offered young lawyers the sense that one can be caring, moral, intellectual, appropriately ideological, while at the same time being radically opposed to the stale views of the left," Horowitz wrote. The law was a battle of ideas, he concluded, and until conservatives acquired better conceptual weapons, liberals would continue to win.

By the time Reagan won the presidency, legal conservatives hadn't fixed their personnel problem. Department of Justice officials had no shortage of recommendations for the undistinguished son of a Republican donor, but they wanted exceptional lawyers dedicated to Reagan's agenda. However, because conservative legal institutions were so weak, senior officials didn't know where to find the right people. They also needed a better way to identify ideologically reliable judges: one former DOJ official admitted to Teles that he used to pick nominees at random from a newspaper ad listing "Law Professors and Deans for Reagan/Bush."

Then, in 1982, a group of students at several prominent law schools founded the Federalist Society, intending to create a forum where conservatives could discuss the concepts they felt were absent from their classes. As an early funding request explained, the group hoped to help conservatives "present their ideas more articulately and more vocally ... perhaps ultimately, to question some of the liberal positions which are being presented as the law." Members invited prominent conservative legal scholars to speak, but they also hosted debates with liberal professors, so they could test and refine their ideas.

The society quickly attracted the attention of Reagan officials like Horowitz, then a general counsel in the Office of Management and Budget, who realized that it might be the answer to the problems he had identified in his report. He helped the society arrange guest speakers from the administration, connected students with government officials with responsibility for hiring, and notified conservative philanthropists that this was a project worth supporting. The recognition from the Reagan administration instantly swelled the society's prestige. It added chapters for lawyers, and became a powerful venue for legal conservatives to connect with each other.

However, it was only when Edwin Meese became attorney general in 1985 that things really began to change. Reagan's first attorney general, William French Smith, had mostly focused on the department's day-to-day activities. Meese, by contrast, was a movement man, determined to invest in the future. He brought in a cadre of loyal and experienced senior staffers, and directed them to recruit smart, young, conservative lawyers in order to set them on the path to the judiciary or higher office. Thanks to the Federalist Society, his officials now had a one-stop shop for promising candidates, and they hired many of its members. When they found lawyers with senior leadership potential who lacked previous government experience, they brought them on as special assistants or advisers so that in a few years they could be assistant attorneys general. In the short term, this helped Meese gain control of the bureaucracy, but he was also planting seeds for the years ahead. One of the many lawyers he cultivated was Samuel Alito. Meese promoted the thirty-five-year-old to deputy assistant attorney general in 1985, after Alito impressed him with his work on a strategy to eviscerate *Roe*.

Meese's second innovation was ideological. He wanted to keep his young staffers motivated, and create the intellectual conditions in which conservatism could thrive. His DOJ held regular seminars and lunchtime discussions—John Roberts, then at the White House Counsel's office, also attended these gatherings. Meese asked a group of department lawyers to craft detailed constitutional arguments for the movement's legal agenda, which remains the same today: outlawing abortion, ending affirmative action, protecting the death penalty, restricting government regulation, and expanding presidential power.

Many have wondered how Barack Obama will repair the damage to the Justice Department. But there is another important question. Conservatives used the department to set American jurisprudence on a rightward course. Could Obama use his Justice Department to turn it back?

In particular, Meese was determined to elevate the status of originalism, the notion that the Constitution should be understood as its authors wrote it. Championed by the Yale law professor Robert Bork, originalism enjoyed a small academic following, but Meese believed it could provide the intellectual fuel for Reagan's goals. On the surface, it sounded

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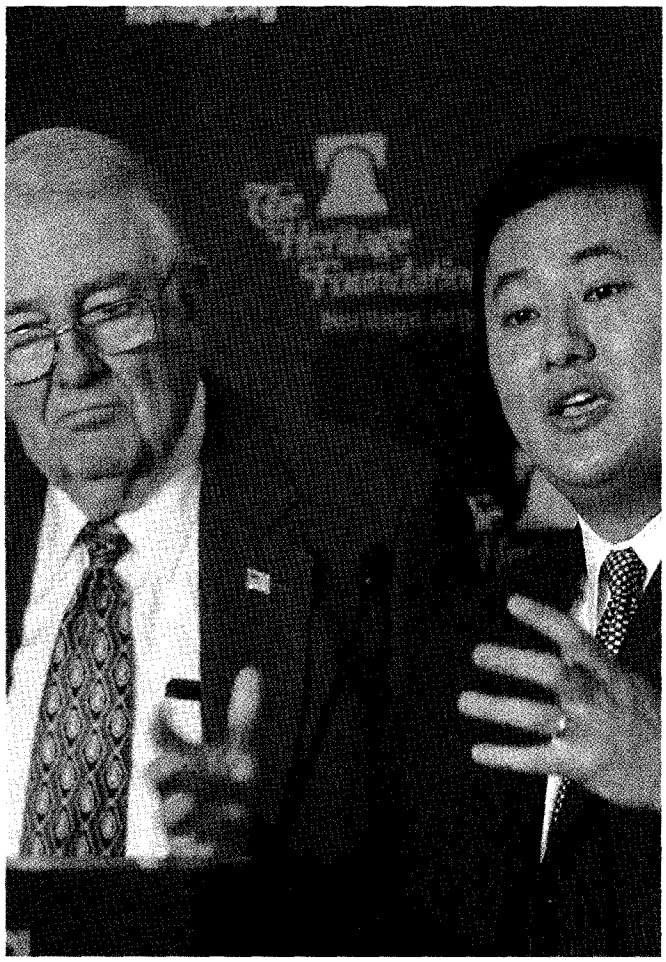

Alpha and Omega: Former Reagan Attorney General Edwin Meese (left) used the Justice Department as a training ground for conservative movement ideologues; John Yoo (right) benefited.

nonpartisan, and there was something deceptively intuitive about it: surely judges are supposed to confine themselves to the strict meaning of the constitutional text. However, originalists tended to be selective about the norms they invoked from the Founders, and their selections usually overlapped with conservative goals—prohibiting abortion, or returning to an era of a smaller federal government. (Antonin Scalia, for instance, defends the death penalty on the grounds that it was clearly acceptable when the Constitution was written, yet he admits that it is not okay to flog people, a punishment also tolerated at the time. He also says that he would have signed on to *Brown v. Board of Education*, although there is no originalist way to reach it.)

Meese saw that originalism could do more than just rationalize conservative policy positions. It provided a justification for overturning decisions that conservatives didn't like, because the Constitution, not accumulated precedent, was meant to be the judge's only guide. Most important, it represented a direct assault on the "Living Constitution"—the idea that the Constitution should be interpreted according to the evolving values of the times—which underpinned the major liberal victories of the Warren Court.

In 1985, Meese made his case in several high-profile speeches, charging that to venture beyond the letter of the Constitution was to engage in "chameleon jurisprudence." The Supreme Court's senior liberal justice, William Brennan, took the bait, retorting that original intent was merely "facile historicism" with "political underpinnings." He couldn't have done Meese a bigger favor. Suddenly, originalism was not a fringe ideology, but a concept worthy of discussion by a Supreme Court justice. The exchange sparked debates in the major law journals and coverage in the press, and ultimately paid off in ways that Meese hadn't intended. Not only did he move originalism into the mainstream of elite academic debate, he transformed the popular understanding of what it meant to be a judge. "Meese was successful in making it look like he and his disciples were carrying out the intentions of the great Founders, where the liberals were making it up as they went along," the Harvard law professor Laurence Tribe told the *New York Times*. "It was a convenient dichotomy, very misleading, with a powerful public relations effect."

Thanks to the foundations that Meese laid, the conservative legal movement made its influence felt even when Republicans were out of power. During the Clinton years, Ted Olsen and Kenneth Starr (both Federalist Society members whose careers were advanced by Reagan's DOJ) grabbed the spotlight with their crusade to impeach the president. However, the movement won another, more enduring victory during this period, by significantly constraining the types of liberal judges Bill Clinton could appoint. Continuing the public conversation that Meese started, conservative lawyers outside the government painted many of Clinton's nominees as liberal extremists who were unfit for the courts. Federalist Society lawyers on the Republican staff of the Senate Judiciary threw procedural obstacles in the way. In the end, they blocked votes on more than sixty of Clinton's nominees to the federal courts (one was Elena Kagan, the new solicitor general), and ensured that his Supreme Court appointments were moderates.

With the election of George W. Bush, Meese's efforts came to full fruition. Bush had a choice of solid conservative judicial nominees for the federal courts with unassailable qualifications in government or the lower courts. Outside the administration, the conservative legal network lobbied the White House and Senate for their preferred candidates; they mobilized more than thirty lawyers to promote their vision of a Supreme Court justice on television. When Bush nominated his White House counsel, Harriet Miers, to the Supreme Court, legal conservatives were alarmed by her lackluster credentials and spotty grasp of constitutional law. They joined forces with Christian conservatives and had her replaced with Samuel Alito, whose intellect and ideological orientation were never in doubt.

Under the guise of restraint, this new generation of conservative judges has wrought dramatic changes. On the appeals courts, conservative majorities have applied the death penalty aggressively, weighed heavily on the side of prosecutors in criminal cases, and constricted the individual's ability to sue or appeal by rejecting an increasing number of cases on technicali-

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ties. Roberts and Alito sailed through their confirmation hearings by presenting themselves as cautious technicians, mindful of the decisions made by jurists before them. But once they reached the Supreme Court, they were not as respectful of precedent as they had claimed. In the first full term that they served together, the Court narrowed the right to abortion, restricted free speech for students, and struck down plans to encourage racial integration in schools, leaving Justice Stephen Breyer to lament, "It is not often in the law that so few have so quickly changed so much."

What can Democrats learn from this? Teles observes that legal conservatives failed when they merely mimicked liberals; they had to develop strategies that fit their own circumstances. So just as conservative public interest law firms floundered in the absence of an intellectual infrastructure, liberals probably won't gain much from their efforts to imitate the Federalist Society unless they tackle their underlying vulnerabilities. A lack of networking opportunities or raw talent isn't one of them: the culture of elite law schools remains liberal, if less uniformly so, and plenty of bright liberal lawyers gravitate toward public service.

But liberals are in a weaker position when it comes to the courts, and not just because they're outnumbered. Over the past thirty years, Republican appointees have become more conservative, while Democratic appointees have become more moderate. This isn't a simple matter of which party controls the Senate—Republicans needed Democratic senators to confirm Roberts and Alito. Rather, it reflects the fact that liberals have lost the upper hand in defining the qualities that make a good judge. The concept of the Living Constitution has been badly hammered, while other liberal ideas about judicial interpretation are confined to the academy. Justice Breyer has attempted to fashion a liberal counterweight to originalism—he calls it "Active Liberty"—but the concept is so convoluted that it's hard to see it catching on. And so even when Democrats are in power, Republicans have successfully painted Democrats' preferred nominees as too extreme or freewheeling, while presenting their own ideal nominees as modest guardians of the Constitution. This won't change until liberals find a way to talk about judges that counters the potent political appeal of originalism.

Obama and his attorney general, Eric Holder, are pragmatists by philosophy and by temperament, and they're unlikely to use the Justice Department as an ideological think tank. This is a good thing, because the Bush administration badly damaged the integrity of the DOJ, which, in any case, shouldn't be responsible for doing either party's intellectual homework. However, one way that Democrats might solve their problem is to appoint better communicators to the courts—judges who, like Robert Jackson or William Brennan, are capable of connecting complex legal concepts to moral principles that Americans understand. As it happens, Obama has expressed similar thoughts, and there are a few things his Justice Department could do to ensure that his preferred nominees actually make it to the bench.

Whenever Obama has been asked about Supreme Court appointments, he has talked about finding a gifted legal thinker who also has "life experience"—not just "academics or people who've been in the court." Last year, he expanded on his thinking to CNN's Wolf Blitzer:

> *What you're looking for is somebody who is going to apply the law where it's clear. Now, there's going to be those five percent of cases or one percent of cases where the law isn't clear. And the judge then has to bring in his or her own perspectives, his ethics, his or her moral bearings. And, in those circumstances, what I do want is a judge who's sympathetic enough to those who are on the outside, those who are vulnerable, those who are powerless, those who can't have access to political power, and as a consequence can't protect themselves from being dealt with sometimes unfairly, that the courts become a refuge for justice. That's been its historic role.*

Obama's criteria is more substantive than it sounds, because experience and personality are fundamental influences on a judge's work. Richard Posner, appointed by Reagan to the Seventh Circuit Court of Appeals, explores this idea in *How Judges Think*, a refreshingly honest disquisition on judicial decisionmaking. He stresses that there is no such thing as the judge-as-baseball-umpire who simply calls balls and strikes, as John Roberts disingenuously suggested in his confirmation hearing. Laws as written are not always clear (sometimes squabbling lawmakers leave them intentionally vague), and even when they are, judges must navigate competing facts. There are always questions for which the law won't provide a pat answer. In making these judgments, Posner writes, the formative impressions of a judge's previous life experiences kick in. "Was he a prosecutor before he became a judge? A defense lawyer? What experiences has he or members of his family or friends had with police or prosecutors, or for that matter with criminals?" Posner cites a raft of empirical studies indicating that while po-

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litical affiliation alone is an unreliable predictor of judicial behavior, political party plus background plus work history is far more revealing.

Personality and temperament, too, are more significant than most judges care to admit. In fact, Posner suggests, a judge's character often attracts them to a particular legal philosophy in the first place. A more "authoritarian" type of personality, which prizes order and hates ambiguity, tends to favor strict rules of interpretation and literalist readings of the law over flexible tests and standards. Judges who are uncommonly happy or angry are apt to decide cases quickly on the basis of fixed ideas. Eisenhower rued his appointment of Earl Warren as the "biggest damned-fool mistake I ever made," but the signs that Warren might make a turn to the left were there all along, in his reputation as a flexible politician with a knack for coalition building and a lifelong affinity for "the little fellow." Anxious, diligent Harry Blackmun spent hours in the law library agonizing over his decisions, an odyssey of questioning that eventually led him to become the improbable author of *Roe*.

Conservatives were successful in making it look as if their disciples in the Justice Department and on the bench were carrying out the intentions of the great Founders, while liberals were portrayed as if they were making it up as they went along.

Obama's desire for empathy and experience in his judges doesn't sound explicitly political. But it could produce a bolder jurist than, say, the self-avowedly cautious Ruth Bader Ginsburg, or a more effective communicator than the scholarly Stephen Breyer. It could also pay off even if Obama only gets the opportunity to replace liberal Supreme Court justices, as seems likely. In some instances, this type of judge may decide cases differently: someone who is intimately attuned to the struggles of ordinary people would surely bring a distinctive perspective to business cases, where Ginsburg and Breyer have regularly joined forces with conservative justices to form the most corporate-friendly Court in recent times. In other instances, they may vote the same way as any liberal judge—here, abortion comes to mind—but do a better job of translating their legal reasoning into terms capable of winning popular support. The beauty of Obama's approach is that his nominees don't need to be overly liberal at confirmation time. Earl Warren, after all, was a moderate Republican. But he was also the son of an immigrant railroad worker who used to quip that he was too poor to give his child a middle name. In the end, Warren's famed sense of fairness was the magnet that pulled his thinking to the left.

If Obama is serious about his vision of a judge, he'll take a tip from Meese, and lay the groundwork early. Since 1975, broad experience has become increasingly scarce on the high court. Today, every justice is a former appeals court judge, and many spent significant time before that as law professors or corporate attorneys. (In 1950, only one justice was a former appellate judge.) And for the most part, the stars of the liberal legal establishment have strikingly similar resumes: Ivy League schools, clerkship for a federal judge, followed by a top law firm job or a prestigious teaching position. This isn't to say that they aren't eminently qualified, or that Breyer or Ginsburg aren't good judges. But if liberals choose all of their jurists from the same mold, their ideas about the law retreat into rarefied places.

To broaden his options, and the options of future Democratic presidents, Obama might find some brilliant lawyers from outside that realm, and enhance their resumes with a nomination to a federal court, or a stint at the Department of Justice. (This doesn't mean imposing Schlozman-style criteria on career positions, but the political roles should certainly be fair game.) How about one of the military lawyers who fought against the Bush administration's torture policy? Or a local politician like the mayor of Newark, Cory Booker, a Rhodes scholar who ran legal clinics for the poor while at Yale Law School?

Finally, like Meese, the Obama administration must make a public case for its model of a judge long before the first Supreme Court nomination comes along. This means major speeches, preferably by Obama, that reach beyond a lawyerly audience. The American Constitution Society, which styles itself as the liberal answer to the Federalist Society, might get members to advance the argument in the popular media, although they may need to pick a few fights if they're to gain any traction. If Obama truly hopes to bring a judge to the Court who understands how the law affects the lives of average citizens, he will have to persuade the public that this is a legitimate and desirable quality in the third branch of government.

In all of this, Obama has a rare responsibility. He has the expertise to think about the Supreme Court in sophisticated terms, and the communication skills to move the country past the cartoonish ideas that have historically dominated debates about judges. He has also been handed a political moment that is surely ripe for the argument that our most powerful institutions should be more responsive to the well-being of ordinary Americans. Obama will have to do more than simply settle for a safe choice when the going gets tough. Otherwise, the change that he seeks will have little chance to take root. WM

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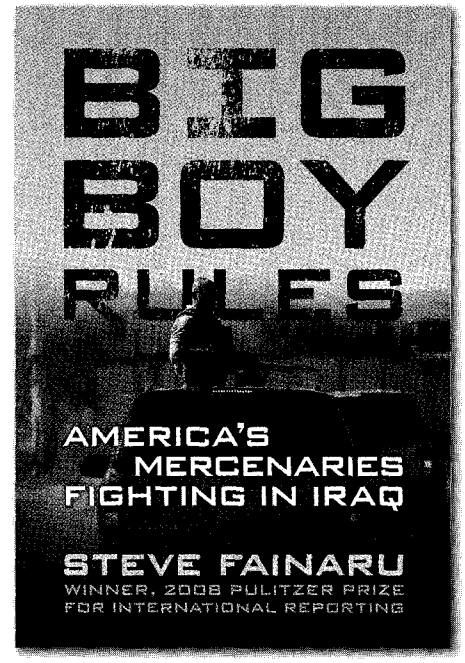
Soldiers of Misfortune

How American private security contractors in Iraq became victimizers and victims.

By Robert Worth



Big Boy Rules: America's Mercenaries Fighting in Iraq
by Steve Fainaru
Da Capo Press, 288 pp.

They were on every flight from Amman to Baghdad: hard-faced men dressed in civilian khakis and boots, their bodies solid and tough, their hair usually shorn to a crew cut. They didn't talk much, and exuded an air of confident menace. Everyone on the plane knew who they were: private security contractors. Most were former military men who had come to Iraq for the money, earning far more than they could back home, in exchange for the real risk of getting shot or having their heads cut off by kidnappers.

In the first months after the invasion, their presence was mostly a tacit detail. Any occupation requires a few extra hired guns. Only later did we begin to hear stories about thuggish foreigners in civilian dress spraying machine-gun fire from the backs of sport-utility vehicles. Our translators lived in fear of them. American soldiers often cursed them, saying the contractors operated outside of any rules and made their own job harder. But our resentment was mixed with ambivalence, because they protected us, too. All the major foreign media outlets with offices in Baghdad paid private security firms. Between 2004 and 2006, during my time covering the Iraq War, I rarely took a trip out of our compound without talking to our British security chief—whose salary dwarfed mine—about what route was safest, whether to take the armored car or not, and how many armed guards would be traveling with me.

Steve Fainaru, a reporter for the *Washington Post*, spent more than a year reporting and writing about private security contractors in Iraq, and won a well-deserved Pulitzer Prize last year for his work. The broad outlines of the story are an amazing parable of governmental failure: the Bush administration sent too few soldiers to police Iraq's chaos, and as the violence grew worse, a parallel army formed on the war's margins, drawing from "a vast pool of veterans and ex-cops, adrenaline junkies, escapees from the rat race, the patriotic, the bankrupt, the greedy, the terminally and perpetually bored," as Fainaru puts it. As with so many aspects of the American occupation, no one had thought seriously about the consequences of bringing so many well-armed civilians—many of them trigger happy—into such a dangerous environment. Were they adjuncts to the military? Should Iraqi law apply to them, or American? No one knew, and no one seemed to care. The money kept flowing, and Iraqi life was cheap. Only in late 2007, when a group of contractors with Blackwater Worldwide killed seventeen Iraqis in Baghdad's Nisour Square, did Iraqi rage over the issue force a reckoning. Iraqi Prime Minister Nouri al-Maliki demanded answers, and Blackwater had to suspend operations. The Justice Department eventually charged five Blackwater contractors with murder in December 2008, and now Iraq's government has demanded that all contractors be subject to Iraqi law in the future. (In early 2009, Blackwater, banned in Iraq and struggling to retool its image, changed its name to Xe.)

Fainaru sketches out the broad arc of this story, but his book, *Big Boy Rules: America's Mercenaries Fighting in Iraq*, is centered on a single terrifying incident. In November 2006, five security contractors were kidnapped in southern Iraq by a group of well-

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armed insurgents that included Iraqi former employees of the company for whom the contractors worked, Crescent Security. Fainaru had just been traveling with the kidnapped men the week before, and had gotten to know them well. His narrative of their lives and backgrounds and of the attack in which they were captured, published at length in the *Post*, was spectacular journalism.

But *Big Boy Rules* offers little that is new, and what it does provide is disappointing. Like many books by reporters, this one appears to have been written too fast, rehashing the newspaper stories on which it is based without building them into an organic narrative. Fainaru does flesh out the lives of the five kidnapped men, who were found dead many months later. He was clearly moved by his encounters with their families, yet the poignancy of these meetings fails to come alive. These men and their families went through something awful, but so have many others in this war, and the grief captured in *Big Boy Rules* tells us little about Fainaru's subject.

Some of the contractors were former soldiers who knew what they were doing; others were convicted felons, prohibited by law from carrying firearms in the United States. The company treated them all as expendable.

The book is also marred by Fainaru's decision to weave in the story of his father's death, which coincided with his reporting on the kidnapping. He clearly wanted to break down the distance between himself and his subject, to show that every foreigner who went to Iraq was in some sense a mercenary, journalists included. But the material feels irrelevant here. Too many publishers urge young authors of nonfiction books to "make it personal" by bringing in their own lives, and here, as so often, it's the wrong call.

Far more vivid is the story of Crescent Security, which Fainaru calls the "K-mart of private security." It hired "former cage fighters, tow-truck operators, qualified AARP members, then handed them weapons and sent them out into Iraq." The training was nonexistent. The company handed out fake IDs to get its contractors onto U.S. military bases. Some of the contractors Fainaru spent time with—as the subtitle of the book shows, he prefers to call them "mercenaries"—were former soldiers who knew what they were doing; others were convicted felons, prohibited by law from carrying firearms in the United States. The company treated them all as expendable. On the day of the Crescent kidnapping, seven men were guarding a convoy that stretched over one and a half miles in what may have been the most dangerous place on earth. Even by the Wild West standards of private contracting in Iraq, that was unheard of.

Iraqis hired by the U.S. security companies were treated worst of all. They made less than one-tenth the salary of the expats, and they had the most dangerous jobs. Fainaru writes, "The Iraqis rolled down the highway for hours, fully exposed, their faces covered with balaclavas to mask their identities and fend off the pelting sand while the expats sat in the air-conditioned cabs, listening to their MP3 players." It was bound to end badly. On the day the five men were kidnapped, only one of the Iraqi employees showed up for work (a man they called Belushi, because of his resemblance to the late American actor), and it was he who set them up. Dozens of armed men hijacked the convoy, among them a past Iraqi Crescent employee who had threatened to kill his former boss before being fired.

The book includes a number of other anecdotes that illustrate the violent, lawless attitude that permeated the private security companies. Triple Canopy, one of the biggest firms, had a bar in its Green Zone headquarters where employees would drink hard and boast about killing Iraqis, Fainaru writes. One of them, a former Marine named Jake Washbourne, told his colleagues one morning, "I want to kill somebody today." When they asked him why, he said, "Because I'm going on vacation tomorrow." Hours later, as his car was passing an old man driving a taxi, Washbourne riddled the car with bullets, first with a pistol, then with an M4 rifle, laughing as he did it. After his colleagues reported the incident, Triple Canopy fired Washbourne, along with two of the men who were in the car (and who had turned Washbourne in). He returned to his home in Oklahoma.

The lawlessness of the private contracting world had another side, of course. No one knows how many contractors have been killed in Iraq, though the number is certainly large. As reports of the Blackwater incident and others like it trickled out into the American public consciousness, people began to think of contractors as brutal thugs, and their deaths were not accorded the respect given to fallen soldiers. Fainaru, whose book is mostly devoted to the dark side of the business, clearly also wanted to recognize the humanity of the people involved in this profoundly dangerous trade, which may be why he devotes so much space to the bereaved families of the five kidnapped Crescent Security men.

For all its vivid moments, Fainaru's book feels rushed, and leaves the reader wishing for a more focused treatment. How did the Bush administration come to rely so heavily on contractors? How did big firms like Blackwater exercise influence in Washington? How has the use of private contractors evolved over time, and how are they used outside of Iraq? A few books have probed these questions, including T. Christian Miller's *Blood Money*, Robert Young Pelton's *Licensed to Kill*, and Jeremy Scahill's *Blackwater*. But there is still plenty of room for someone to help us understand how the U.S. government contracted out so much responsibility to hired guns and then supervised them so poorly. WM

Robert Worth is Beirut bureau chief for the *New York Times*.

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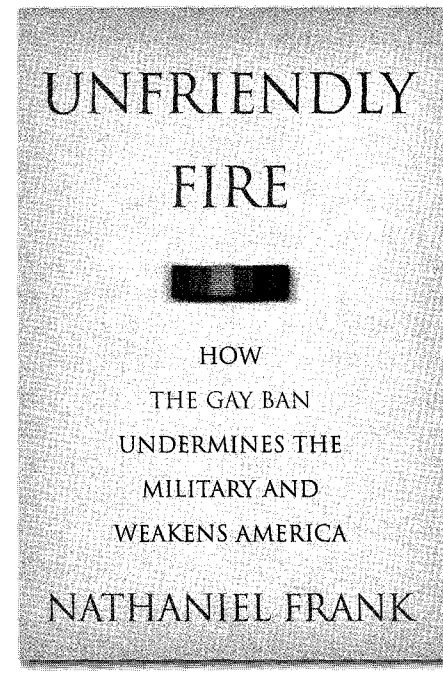
Straight Away

Don't ask, don't tell is on its way out, and not a moment too soon.

By Michael O'Donnell



Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America

by Nathaniel Frank
Thomas Dunne Books, 368 pp.

One of the ugliest moments of the 2008 presidential campaign involved a room full of people booing a gay general. During the Republican CNN/YouTube debate in November 2007, retired Brigadier General Keith Kerr asked a question by video. In a gravelly voice, he cited his forty-three years of military service and credentials, and then announced his homosexuality and pointedly asked why American soldiers were not professional enough to serve alongside gays and lesbians. After Duncan Hunter, Mike Huckabee, and Mitt Romney answered with rote bromides about the feared impact of gay troops on "unit cohesion," the moderator asked Kerr whether he felt he'd gotten an answer. With dignity and not a little courage standing there holding the wrong war drum, Kerr quietly began to explain why he hadn't, and that's when the first arrows flew. First his microphone was switched off—possibly by accident—only to be hastily switched on again at the moderator's direction. Then the jeers began, scattered at first but growing louder until Kerr stopped talking. John McCain (he of truth-to-power lore) was the only candidate to speak after Kerr, but he said that the don't ask, don't tell policy was working. None of the candidates acknowledged that an American general had just been shouted down on national television.

Bigotry against gays and lesbians, even those in uniform, sadly persists in this country. As one of the great moral and cultural problems of our time, it can't be solved at a stroke, but McCain's line about don't ask, don't tell can at least be shown up for the nonsense that it is. Only the most removed, unconcerned anti-empiricist could say that the policy—which turned fifteen on March 1—has been anything less than a disaster. Discharges for homosexuality have skyrocketed under it: more than 12,000 gay men and women, including fifty-eight Arab-language specialists, have been dismissed since 1994, many of them during a time of military exigency, recruiting shortfalls, and harsh stopgap measures. The policy has prompted witch hunts, loosened restrictions on service by ex-convicts, tarnished the military's image, and encouraged homophobia rather than eradicating it. And don't ask, don't tell is very unpopular: 75 percent of Americans favor letting gay troops serve openly, and 104 retired admirals and generals recently called for the policy's repeal in favor of open service.

That's a long fall for what was meant to be a progressive reform. Don't ask, don't tell is the bastard stepchild of Bill Clinton's remarkable campaign pledge to end the prevailing ban on gays in the military. Nathaniel Frank, the author of *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America*, doesn't blame Clinton for the mess he made, although Frank does mourn what might have been: a new day in which gays could serve openly, albeit with the same restrictions against on-duty hanky-panky that all soldiers must accept. The first half of Frank's book tells the history of don't ask, don't tell; the second half launches a full-scale broadside against a policy that Frank says "is a farce" that is "based on ignorance, denial, and deception." *Unfriendly Fire* reads like a crisp, confident, tightly focused legal brief appealing an unconscionable decision; pity the opposing advocate who must answer it point by point. With this book, President

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Obama, who pledged to scrap don't ask, don't tell, has an instruction manual, as well as a blooper reel for avoiding Clinton's mistakes.

The unraveling of Clinton's idealistic plan reads a little like a history of a certain contemporaneous health care debacle: hearts all in the right place, but insufficient planning, and insufficient politicking—equal parts earnestness and cluelessness. Like a light hiker who suddenly decides to climb Mount Everest, Clinton marched into office and ran straight into the Christian right and the generals. Opposition by the former was no surprise, but the latter meant real trouble, especially when Colin Powell got involved. Powell led the charge against gay troops, expressing concern about the "moral issue" of homosexuality, opining that being gay is, at bottom, a "choice," and publicly threatening to resign if gay troops were allowed to serve openly. The remarkable part is that Powell, like some Scotchguarded political miracle, retained an impeccable reputation among the center-left despite all this—a trick he pulled off again a decade later when he lent his valuable brand to the case for war in Iraq. Frank's book might prompt a reassessment of Old Eagle Eyebrows.

As if Powell's opposition weren't enough, Clinton also couldn't get past Sam Nunn, the Democratic chairman of the Senate Armed Services Committee. Years earlier, Nunn had scorned the idea of military service by women and fired two aides expressly because they were gay. Frank suggests that Nunn opposed gay integration because he both disliked gay people and wanted to get back at Clinton, who had passed him over for secretary of defense. That claim is hard to verify, but what is clear is that Nunn's committee hearings heavily favored homophobic testimony, and that Nunn spurned progressive allies like John Kerry and Barbara Boxer to make common cause with such civil rights luminaries as Trent Lott and Strom Thurmond. Hearings in the House Armed Services Committee were even nastier, with witnesses describing gays as "walking repositories of disease" and homosexuality as "a moral virus." Seeing his political capital bleed away like so much battlefield detritus, Clinton accepted compromise, and don't ask, don't tell was born.

Once in place, the policy's most immediate effect was to halt the military's practice of asking new recruits about their sexuality. But, as Frank shows, in all other ways the "don't ask" part proved a hollow guarantee. Under the policy, simply being gay indicated a propensity to commit homosexual acts and therefore warranted dismissal. And the military gaydar was officially switched on: reporting sexual harassment, calling or writing a loved one, even listing someone of the same sex on survivorship documentation all

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led to investigations and discharges. Frank tells of a midshipman who wore an AIDS ribbon, which prompted his instructor to ask, "What are you, some kind of fucking homo?" In a frantic effort to cover up, the midshipman went with his friends to a brothel and sat quietly with a female prostitute behind closed doors. This type of forced deception takes a major toll on the soldiers who must lie their way through service, compelling them to shut down or appear aloof any time talk turns to family or personal issues.

The brothel incident also prompts the question of whether the homophobic attitudes that undeniably still exist in the military justify a gay ban. This would of course be no excuse in any other context; a business certainly can't legally refuse to hire blacks on the rationale that its customers don't like black people. But more fundamentally, if prevailing discriminatory sentiment against a minority justified enshrining that discrimination in policy or law, this country's long march to equality for blacks, women, and the disabled would have gone nowhere. And anyway, soldiers' attitudes toward gays are evolving. Frank quotes dozens of straight troops saying that if a soldier can get the job done, his or her sexuality doesn't matter. As one retired admiral put it, young soldiers "were just laughing at us because we didn't understand what they were thinking. Young people had so dramatically opened up to the idea of working alongside openly gay people that us crusty old farts protecting them was just a joke."

This notion of protection—the idea that straights must be shielded from gays—remains the backbone of the persistent but unsupported argument that open gays and lesbians would disrupt morale and unit cohesion. Frank observes that this line of criticism is prurient and a little silly, since showering within view of a homosexual is hardly the biggest inconvenience a soldier faces (getting shot at and being told what to do all the time both seem worse). The argument also assumes that homosexuality is morally objectionable, for unless there's something inherently wrong or predacious about being gay, straights wouldn't need to be protected. In any case, the antidote to lingering animus toward gay troops is leadership of the type that Powell so brazenly refused to supply: the armed forces should be in the business of protecting victims of discrimination, not apologizing for discriminators. If the brass gave the order, the order would be followed.

Of course, it's impossible to verify the actual impact of gay men and women on unit cohesion as long as don't ask, don't tell remains in effect. And as a general rule, social scientific arguments that cannot be falsified should not be trusted. Nevertheless, the evidence that does exist overwhelmingly indicates that openly gay troops do not harm militaries. Twenty-four countries, including Israel, Great Britain, Spain, Ireland, and Canada, have lifted their gay bans, and studies by RAND, the British Ministry of Defence, and the U.S. Government Accountability Office conclude that gay troops have not harmed morale, cohesion, recruitment, or effectiveness in those countries. In Frank's words, the results of integration abroad "have been so uniform, so uneventful, so tediously boring and repetitive that they are almost too dull to describe." Conservatives dismiss the relevance of foreign militaries as vehemently as they reject the trend of American courts to cite foreign legal precedents. But this critique seems more about xenophobia than meaningful distinctions.

Frank doesn't discuss whether don't ask, don't tell will turn out to have been a necessary intermediate step toward full equality, although his comprehensive critique suggests that it was a bad deal from day one. Fifteen years is a long time in culture war years; maybe, some might say, we needed this buffer period for homosexuality to work its way into the country's social fabric. Historians will have to decide that one, although years of witch hunts seems like a high price to pay for equal rights. In any event, don't ask, don't tell now belongs firmly in the dinosaur column—it is an openly discriminatory policy that dates itself each time we wincingly articulate it, and one that has been sustained by naked prejudice rather than hard data.

> Unfriendly Fire *reads like a crisp, confident, tightly focused legal brief appealing an unconscionable decision; pity the opposing advocate who must answer it point by point. With this book, President Obama, who pledged to scrap don't ask, don't tell, has an instruction manual, as well as a blooper reel for avoiding Clinton's mistakes.*

In the 1986 decision *Bowers v. Hardwick*, the Supreme Court upheld the use of Georgia's criminal sodomy statute against a gay man whom police apprehended in the bedroom of his own home. Seventeen years later, in *Lawrence v. Texas* (2003), the Court changed course and struck down a similar ban used against gays in Texas: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled." Don't ask, don't tell deserves a similar eulogy. WM

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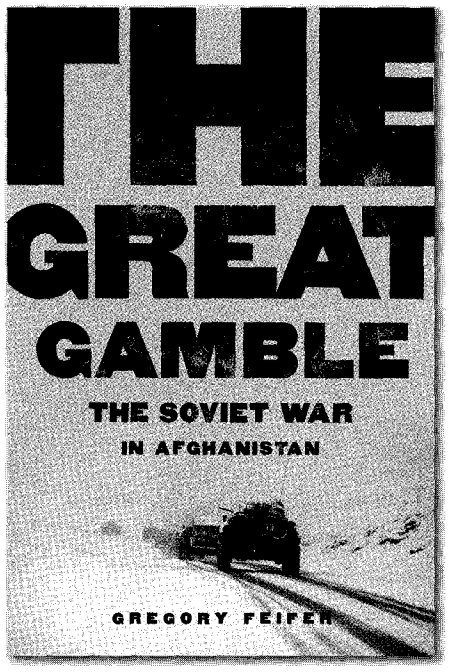
Retreat From Kabul



The Great Gamble: The Soviet War in Afghanistan
by Gregory Feifer
HarperCollins, 336 pp.

The Soviet defeat in Afghanistan teaches many lessons. America's inevitable defeat isn't one of them.

By Christian Caryl

The Soviet war in Afghanistan was a dark comedy of errors right from the beginning. Western propaganda during the Cold War liked to paint the Russians as soulless robots, but, as NPR Moscow correspondent Gregory Feifer describes in his new book, *The Great Gamble: The Soviet War in Afghanistan*, the reality of Red Army operations during the Soviet takeover was more Keystone Kops than anything else. On the first day of the invasion, December 27, 1979, Soviet special forces converged on the presidential palace in Kabul. Their job was to kill Afghan President Hafizullah Amin, who was suspected by Moscow of treacherous disloyalty. A ruthless Communist, Amin had murdered his predecessor, Nur Muhammad Taraki, along with most of Taraki's family, and sent thousands of opponents to firing squads or jail during his own brief tenure in office.

As Feifer vividly recounts, the Soviet operation was swathed in confusion—perhaps a reflection of the secrecy and bureaucratic timidity with which Leonid Brezhnev's Politburo had ordered the invasion fifteen days earlier. Before the attack, the Soviets had spent billions of dollars propping up pro-Moscow regimes in Kabul. An April 1978 coup by the Afghan Communist Party finally succeeded in installing an overtly revolutionary government—which then immediately foundered as its radical social programs inspired revolt in the countryside. Still, as its subsequent dithering demonstrated, the Kremlin was notably unenthusiastic about direct intervention in Afghanistan. Subsequent events would show that reluctance to be well founded.

The day unfolded as the KGB, with the help of Amin's Russian cook, succeeded in poisoning the Afghan president—this after an earlier attempt had been thwarted by Amin's fondness for Coca-Cola. (The fizz neutralized the toxin—future dictators, take note.) One of Amin's Soviet doctors, who hadn't been tipped off about the poisoning, resuscitated him. Cue the arrival of the Russian commandos, who shot the groggy president in his underwear as soon as they spotted him in a hallway. They then tossed in a hand grenade for extra effect, finishing off not only Amin but also his five-year-old son. Judging by Feifer's account, the elite Soviet *spetsnaz* troops who staged the attack were lucky to have made it that far. The troops were undeniably "elite" as far as their training was concerned, but their leaders failed to coordinate some of the most basic details of the operation, which meant that the various units involved ended up killing each other as well as shooting at the few Afghan government troops who put up a fight. By the end of the evening a handful of Russian commandos and most of Amin's family were dead.

That episode set the tone for everything that followed, and nine years later Soviet troops left the country in ignominy. The official death toll for their side was 15,000; as Feifer notes, some experts think the real number was far greater, perhaps as high as 75,000. Some 1.3 million Afghans were killed; a third of the prewar population, close to 6 million people, fled to neighboring countries, while another 2 million became internal refugees. Afghanistan had been transformed into

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a moonscape, and the political vacuum that ensued continues to bedevil the international community to this day. The USSR had wasted countless billions on the war at a time when its own economy was largely grinding to a halt, and revelations of war-related corruption and bungling contributed mightily to popular hatred of the Communist Party and, ultimately, to the disintegration of the Soviet empire. Feifer argues, I think quite rightly, that one of the biggest hidden costs of the Soviet experience in Afghanistan was the psychological trauma brought back home by an entire generation of Afghan war veterans. Their brutalized ranks were hugely responsible for the rise of organized crime that took hold in Moscow as the Communist Party relinquished control.

This might seem like ancient history to some, but it's all intensely relevant. One of the biggest tasks facing the Obama administration is, of course, precisely how to fix NATO's war in Afghanistan. Our conspicuous failure to gain traction there so far suggests that we just might not have assimilated the lessons of the Soviet misadventure to quite the depth required. Feifer is up front about this. Though he uses a bit of testimony from Afghan sources, his account of the occupation relies much more heavily on interviews with Soviet veterans. "Their perception of the war they experienced and endured may help dispel some American illusions about our wars," he writes, "and also make us more sensitive to the volatility of the regions now determining the success or failure of our foreign policy."

Fair enough. And there's no question about it, Feifer's richly reported tale has its share of eerie déjà vu moments. One Soviet soldier recalls an instance in 1987 when his unit opened fire on what they took to be a "mujaheddin caravan." The Russians soon discovered that they had slaughtered a roving wedding party on its way from one village to another—a blunder that soon, all too predictably, inspired a series of revenge attacks on the Red Army troops in the area. This undoubtedly sounds wearily familiar to U.S. and NATO planners (and Afghan government officials) struggling to contain the effects from the "collateral damage" that is often cited today as one of the major sources of the West's political problems in the country. I caught myself wincing when Andrei Gromyko, the redoubtable Soviet foreign minister, is shown complaining about the impossibility of sealing off the borders with Pakistan, an issue we're still wrestling with today.

Feifer's account is rife with details of the Russians' failure to integrate political and military strategy. Despite plenty of attempts to build roads and prop up farmers, the Soviets never managed to get the hang of civil affairs. One big reason for that, of course, is that their own system was dysfunctional. It would have been hard enough to make a workable state out of Communist Afghanistan even if the "fraternal" Soviet forces in the country had been backed up by an efficient state at home. Feifer's narrative really comes alive when his interviewees describe the corruption, inefficient logistics, and general mistreatment that dogged the war effort at every turn. Today's U.S. soldiers can expect hot rations and laptops, satellite links and on-demand therapy. For Red Army soldiers in the 1980s, bliss was a fire extinguisher filled with covertly made moonshine, a chicken looted from the local farmers, or one of the rare commanders who frowned upon *dedovshchina*, the deeply entrenched system in which regular soldiers are subjected to savage hazing by their immediate superiors. (In one memorable scene, an officer gives the bullied men the chance to take revenge; they strap their tormentors to a couple of bed frames and tattoo them with burning cigarette butts.) No wars are pretty, but the sheer brutality of this particular conflict remains stupefying. The Russians blithely wipe out entire communities, or sow vast areas with mines; the guerillas respond in kind whenever they can. One of Feifer's interviewees recalls arriving at the scene of a firefight and coming upon a fellow Russian who has been completely skinned by the mujahideen: "He was still alive, sitting next to a tree, covered in flies."

In short, the overwhelming majority of "lessons" from Feifer's account are negative ones. If you want to know how not to conduct a counterinsurgency in Afghanistan, this is definitely the book to read. Yet there are also quite a few hints in the narrative that point, tantalizingly, in the opposite direction. Around 1985, as Feifer acknowledges, there was a moment in the war when the Soviets actually appeared to be, as he says, "gaining the upper hand." It certainly didn't hurt that their side had plenty of boots on the ground. The Russians were hitting the guerillas hard, and the Afghan government army, "its numbers growing and troops better trained," was actively participating in operations. Soviet commanders were gradually fumbling their way toward close coordination of ground and air attacks. And one weapon in particular turned out to be a perfect fit for this particular battlespace: the Mi-24 helicopter gunship, aka the "Hind" or the "Flying Tank." The heavily armored Hind, bristling with cannons and rockets, was just the thing you wanted hovering in the neighborhood as your unit of heliborne special forces deployed on the crags of some hellish Afghan valley.

If you want to know how not to conduct a counterinsurgency in Afghanistan, this book is definitely the one to read. Yet there are also quite a few hints in the narrative that point, tantalizingly, in the opposite direction—that wars there can be won.

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In fact, it was precisely this sense that momentum was on the Communists' side that spurred an initially reluctant CIA to supply the anti-Soviet jihad with shoulder-held Stinger missiles, crucially denting Russian air superiority. Feifer's sources confirm that the move had a devastating effect on the progress of the war—though it may have been somewhat academic when you consider that Mikhail Gorbachev, who had by that time ascended to the Soviet leadership, had already decided to pull his forces out. Yet even after this point there is still the intriguing fate of Mohammad Najibullah, the Afghan secret police chief who took over the country in 1987. A man who never shied at shedding blood, Najibullah was widely feared. But—in stark contrast to his predecessor, the feckless Babrak Karmal—he ended up, against all the odds, sticking it out for another five years. As Feifer points out, he outlasted the Soviet Union itself.

How did he do it? Feifer doesn't really say. Certainly infighting among the anti-Soviet resistance didn't hurt; neither did Najibullah's relative success at portraying himself as a good Muslim. (Indeed, when I was in Afghanistan in 2002, I was startled to hear people praising him as one of the country's great martyred leaders—along with Ahmad Shah Massoud, the guerilla commander assassinated by Osama bin Laden in the days leading up to 9/11.) In any case, it would have been helpful to learn more. It may be that Feifer had more or less lost interest in the narrative by this point. Or it may also be that this episode would have contradicted one of the themes Feifer is trying to get across—namely, that Afghanistan is inherently unconquerable:

> *The Soviet war in Afghanistan again confirmed that no power ever successfully conquered that land, which, for all its remoteness, lies at a strategically important crossroads of empires ... While foreign forces have often moved into Afghanistan with relative ease, they've never been able to maintain control.*

Really? On that basis I think Feifer could soon find himself facing legal action from, say, the representatives of ancient Persia, or the Mongols, or the heirs of Tamerlane (who governed the place for almost two centuries, most of it from their glittering capital in Herat), or even the Ghaznavids (don't ask). Wars can be won in Afghanistan. It might be a lot harder to win them following the devastation that the Soviets wrought there, but they can be won. Despite the dark conclusions of this brilliantly reported book, President Obama might want to keep that in mind. WM

Christian Caryl is the Tokyo bureau chief of *Newsweek*. He has reported from thirty-seven countries, including Russia, Afghanistan, North Korea, and Iraq.

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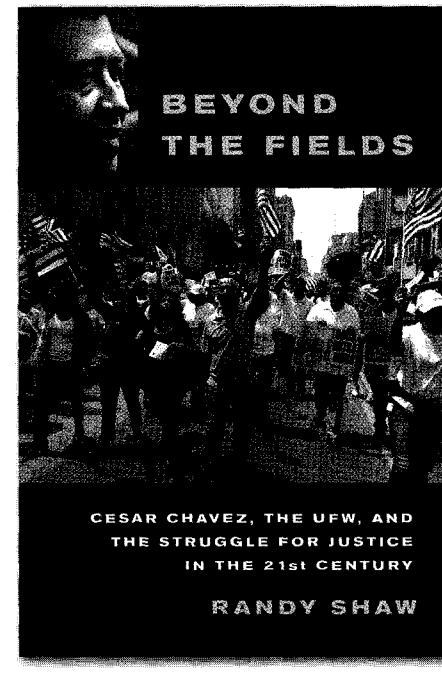
Yes He Did

What Barack Obama learned from César Chávez.

By T. A. Frank



Beyond the Fields: Cesar Chavez, the UFW, and the Struggle for Justice in the 21st Century

by Randy Shaw
University of California Press, 368 pp.

For the record, "Yes we can" emerged as a slogan later and less deliberately than one might think. The year was 1972, three years after César Chávez had appeared on the cover of *Time* magazine and two years after he had led farmworkers to a major victory against grape producers in California. Chávez was in Arizona trying to reverse a law prohibiting strikes by farmworkers during harvest time. Supporters of Chávez told him the law couldn't be repealed. "*No se puede*," they said. Dolores Huerta, a colleague of Chávez's, disagreed. "*Sí! Sí se puede*," she insisted. After hearing Huerta's words, Chávez anointed *Sí se puede!* as his new rallying cry. Or so the story goes. In any case, the skeptics turned out to be right: *No, no se puede*, at least in Arizona. The law remained in effect. Still, a potent motto had been coined.

While the origins of *Sí se puede* may be linked to failure, the slogan is arguably no less powerful for it. The verb phrase (in Spanish) is "can be done," not "will be done." Success isn't guaranteed or even likely. It's simply possible. And that's compelling in itself. Given the force of the catchphrase, it's odd that no major politician adopted it until Barack Obama came up with a "Yes we can" campaign in 2008. It's also fitting that Obama wound up drawing heavily on the lessons and methods employed by Chávez four decades earlier.

César Chávez was born in Yuma, Arizona, in 1927. His father, a farm owner, was unable to hold on to his land during the Great Depression, and the family moved to California, finding work in the fields. It was miserable, naturally. César went on to other things, serving in the Navy in World War II, working as a community organizer in the 1950s, and founding the National Farm Workers Association in 1962. The NFWA would later merge with another agricultural group (the Agricultural Workers Organizing Committee) and become the United Farm Workers.

In 1965 Chávez started organizing California's agricultural laborers in earnest. The United States had recently done away with a program in which foreign temporary workers, called *braceros*, would be shipped in from Mexico each year to pick crops during harvesttime. Having *braceros* out of the picture made organizing U.S. farmworkers much more feasible. But the challenge was still formidable. Most people toiling in the fields were uneducated, fearful, and reluctant to take any chances with what little pay they earned. Also, U.S. labor law exempted (and still exempts) farmers from work rules that prevailed in other industries under the Fair Labor Standards Act of 1938. Unlike, say, steelworkers, farmworkers couldn't organize using ordinary union elections.

Instead of being daunted by the absence of numerous FLSA protections, though, Chávez and his coworkers saw opportunities. Their weapon was the boycott, and their target was table grapes—along with any entity that helped make table grapes available to the public. For union workers covered by the FLSA, "secondary boycotts" of this sort are illegal. A unionized steelworker, for instance, can go on strike against her employer, but she may not call for a boycott of Sears for carrying products made with steel from her plant. Farmworker unions, not protected by the FLSA, are exempt from that kind of restriction. Taking advantage of this, the UFW sent volunteers across the country to pressure every supermarket possible to stop offering nonunion grapes. The campaign took off, and, during the late 1960s, conscientious

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liberals all over the country steered clear of the forbidden fruit. Chávez, an admirer of Gandhi and a devout Catholic, consistently advocated (and practiced) nonviolence, earning himself national adulation and visits from public figures such as Bobby Kennedy. In 1970, the major grape growers gave in, and the UFW got a contract guaranteeing workers $1.80 an hour in pay (a fifteen-cent raise) and a health and welfare fund. It was a remarkable victory.

Despite his flaws, Chávez was blessed with an unusual abundance of concern for others. He never appealed to ethnic chauvinism. He never countenanced violence. He never cashed in. He was inclusive, peaceful, and faithful to his principles. And his decency was contagious.

The UFW had a few more big achievements in the 1970s, including a 1975 law in California that gave farm laborers the same rights to organize that workers in other industries enjoyed. Surprisingly, though, by the early 1980s the organization had run out of gas. When Chávez died in 1993, the UFW and its leader were widely admired but no longer powerful. There were legitimate external reasons for this: The public had lost interest. Conservatism was in the ascendant. Illegal immigration had surged. But the rapidity of the UFW's decline was due mainly to Chávez himself, who fell under the spell of kooky gurus and began to purge many of his most valuable employees, often accusing them of being Communists or traitors. With success had come disagreements over where to take the union next, and Chávez, for all his asceticism and modesty, couldn't tolerate challenges to his authority.

In his book *Beyond the Fields: Cesar Chavez, the UFW, and the Struggle for Justice in the 21st Century*, San Francisco lawyer and activist Randy Shaw doesn't dwell on the decline of the UFW. Instead, he focuses on numerous successful organizing efforts of the past decades and attempts to show how they can trace their roots back to Chávez and his union. The UFW may have lost a lot of talented people, but, as Shaw demonstrates, they went on to have a major impact on public life in other ways.

The alumni of the movement have indeed been impressive. Miguel Contreras, a farmworker who started as a UFW boycott organizer in the 1960s, eventually became the chairman of the Los Angeles County Federation of Labor and a political heavyweight who helped mobilize Latino voters and turn the region from red to blue. (Hilda Solis, Obama's secretary of labor, owes much of her career to Contreras.) Jerry Cohen, a brilliant lawyer who devised many of the UFW's cleverest legal tactics, went on to become a master of class action litigation against badly behaved corporations, like Union Carbide in 1984 and Exxon after the *Valdez* oil spill in 1989. Marshall Ganz, the UFW's chief field organizer, became a grassroots guru for politicians, including Alan Cranston in 1986, Nancy Pelosi in 1987, Howard Dean in 2004, and Obama in 2008. These are just a few among of the dozens of UFW alumni who stayed involved in social activism.

The Obama campaign, which drew directly on much of Ganz's methodology, represented UFW-style organizing at its best. Instead of hiring staff to go door to door or man telephones, the campaign hired people whom it trained to be organizers. These organizers would in turn recruit local leaders and volunteers and train them up. When one volunteer stumbled upon an enthusiastic convert, the convert would be enlisted as a new volunteer. There was outreach to religious leaders. There was an emphasis on youth. There was relentless idealism. César Chávez would have been delighted.

Shaw's book is the product of extensive research, and it's invaluable for anyone interested in the evolution of unionization over the past forty years. California takes center stage for much of the story, and Shaw shows how UFW alumni helped to shift the political power balance of the state decisively to the left. Shaw also includes charts and lists of former UFW staffers and where they've ended up. It's a reminder that a well-organized and passionate movement can lay the groundwork for future success even when individual campaigns fail.

While *Beyond the Fields* manages to link UFW alumni to a wide variety of political developments over the past twenty years, however, it's less persuasive in assessing cause and effect. After noting Chávez's ineffectual campaign to overturn the antistrike law in Arizona, for example, Shaw observes that, nevertheless, the "UFW's voter registration efforts led to the election of ... the state's first Mexican-American governor, in 1974." Is there evidence for this? There may be, but Shaw doesn't offer any. In another passage, Shaw relates the story of how UFW alumni organized a 1980s boycott of coffee producers who purchased beans from El Salvador. "The three [major coffee-producing] corporations, who controlled 80 percent of [El Salvador's] coffee imports to the United States, were now pressuring the Salvadoran government for a peace settlement," writes Shaw. "On January 16, 1992, a peace agreement was signed." A lot of the book is like this.

As for the debates that surrounded the UFW in the 1960s and '70s—and whether business leaders, farm owners, and Republican politicians had any grounds for opposing the UFW's efforts—Shaw has little to say on the subject. Republicans make brief appearances in the book as one-dimensional allies of big money. But the story was always more interesting than that. Farming is

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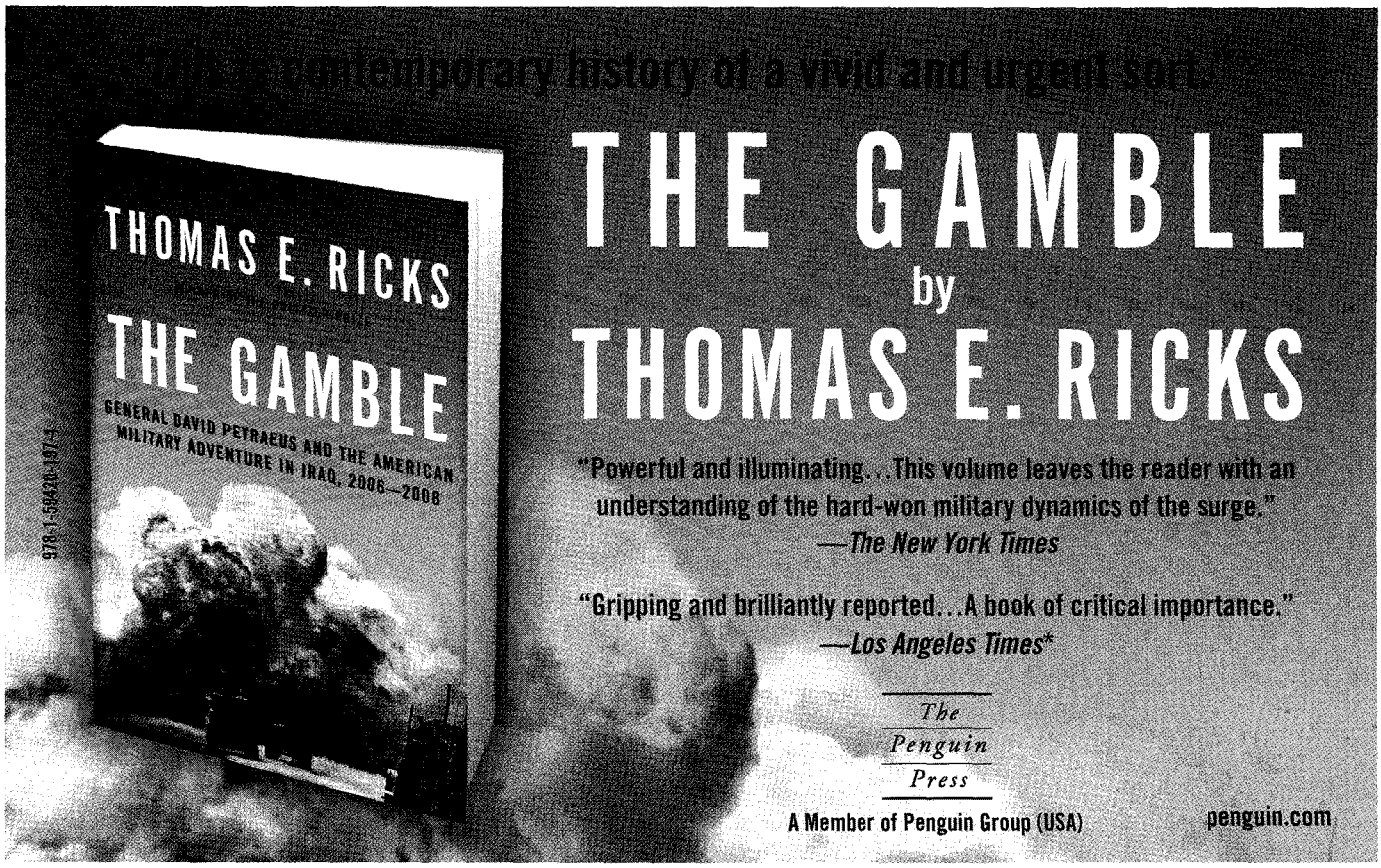
no fun for the fieldworkers, but it's no picnic for the growers either. It's a volatile, often lousy, way to make a living. And labor disputes in agriculture are a special business because of how Mother Nature gets involved. For a grower whose workers go on strike during harvesttime, when a field of fruit is only days away from rotting on the vine, the danger isn't just a dip in your profits. It's ruination. Your workers have you by the strawberries. Policymakers who seek to intervene in this sort of conflict often come up with bad ideas weighted toward one side or the other, but they aren't necessarily just venal, either.

A footnote on the issue of immigration: these days both the seal-the-borders crowd and the open-the-borders crowd claim César Chávez for their side. Both seem to be stretching it. Shaw, who appears to lean toward the open-the-border side, contends that Chávez didn't mind illegal immigration per se, merely illegal immigration when it took the form of strikebreaking. But the distinction is strained. The arrival of myriad illegal newcomers made holding the union line extremely difficult, and Chávez understood this. When growers trucked in Mexican laborers to get around strikes, Chávez demanded that the Immigration and Naturalization Service step in. This made him a bit of an immigration hardliner, to the dismay of many of his colleagues. But Chávez was also too much of a softie to ever advocate kicking people out en masse. If he had a consistent opinion—and it's not clear he did—it probably boiled down to this: Join the UFW, and you're fine, whatever your nationality. Scabs, go home.

Today, sadly, the UFW has lost much of its luster. In 2006, a *Los Angeles Times* series painted a particularly bleak picture of an organization that had strayed from its founding purpose and principles. But Chavez the man remains justifiably revered. Despite his flaws, he was undoubtedly blessed, or cursed, with an unusual abundance of concern for his fellow creatures. (He was even a vegan, out of compassion for animals.) And his decency was contagious. Those who once worked with Chavez are varied in their pursuits today, and their politics range from centrist to super-left, but they tend to be alike in honorable motivations. Chávez never appealed to ethnic chauvinism. He never countenanced violence. He never cashed in. He was inclusive, peaceful, and faithful to his principles, leading from the front. "When you work and sacrifice more than anyone around you," he once said, "others feel the need to do at least a little bit more than they were doing before." That's why people put up with years of hardship to work with him, and it's why they achieved such improbable aims. Well, *sí se puede*. WM

T. A. Frank is an Irvine Fellow at the New America Foundation and an editor of the *Washington Monthly*.



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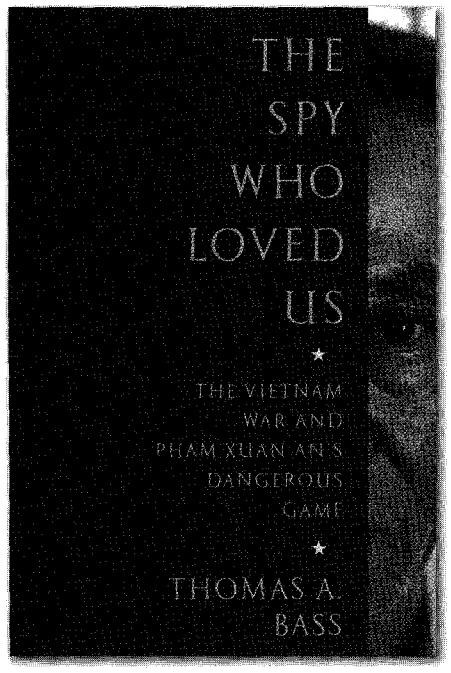
The Quiet Vietnamese



The Spy Who Loved Us: The Vietnam War and Pham Xuan An's Dangerous Game

by Thomas A. Bass
PublicAffairs, 320 pp.

Pham Xuan An was a respected colleague of American reporters in Vietnam—and Hanoi's most valuable spy.

By Loren Jenkins

For most of us who did time in Saigon covering the Vietnam War, a favorite spot was the old French colonial Continental Palace Hotel. It had history, character, and a strategic location in the heart of the city—it faced the old opera house, flanked the famous rue Catinat of French colonial days, and sat catty-cornered from the government press filing center.

The gracefully aging three-story building, with its potted palms, high ceilings, and slow revolving fans, had the decadent feel of a Somerset Maugham novel. It was, after all, where Graham Greene had come in the 1950s to research—and set—*The Quiet American*, his classic novel of American political naïveté about the Third World. There was a great inner patio at the Continental Palace for al fresco dining after the nightly curfew rang down. And, more importantly, it housed Saigon's best bar, known to the cognoscenti as "The Shelf" for its openness to the streets outside. It was here that every manner of spooks, hacks, diplomats, and Hawaiian-shirted off-duty military types gathered daily to swap tall tales, recent rumors, and political gossip. They did all this while gazing out over chilled beers at the ever-fascinating theater of the absurd along Tu Do Street, which was what the old rue Catinat had been renamed after the departure of the French.

The Continental Palace and its immediate environs comprised a major center of news gathering. Not only did such sages of the war as the *New Yorker*'s Robert Shaplen and the *Chicago Daily News*'s Keyes Beech make the hotel their base in Saigon, but *Newsweek* and *Time* had their bustling bureaus on its second floor. Most visiting media stars either camped out there on their way to visit with the generals and ambassadors or used the Shelf as their unofficial office and briefing center to double-check what they heard on their official rounds. It was on the Shelf at the end of a hard day at the front that one repaired for unofficial assignations to exchange information gleaned, sniff the air for newly planned political and military initiatives, or get hints of intended plots and coups.

But the real reason the Continental Palace was such an important center of news was that it was there—at the *Time* office, or just across the street in the Café Givral—that one found a slight, gaunt, and unassuming U.S.-educated Vietnamese journalist named Pham Xuan An. Covering the war first as a freelancer for publications such as the *Christian Science Monitor*, then for the Reuters news agency, and finally, in the last ten years of the war, for *Time*, An was a legend among those seeking to understand Vietnam and its wars. Journalists, diplomats, and even the CIA agents who came to know and trust him considered An the single best-informed journalist in the country.

An briefed everyone—fellow journalists, diplomats, and intelligence agents of all manner and nationalities. He was everyone's interpreter of all things Vietnamese: its history, its culture, its belief systems, and its personalities, both past and current. He was a shrewd analyst of Vietnamese politics and wartime strategies. He was also very good company, a man of wit and charm.

By virtue of his position of trust and knowledge as well as his standing as a member of the U.S. press corps, An was also privy to everyone else's briefings, official and unof-

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ficial. Those who went to him for information also imparted their own. And what he didn't glean in conversations with the journalists, diplomats, and officials who came to sit at his table at Givral's, he got from attending official and often off-the-record briefings by South Vietnamese and U.S. officials as a staff member of *Time* or by reading the voluminous reports his fellow *Time* correspondents filed to their home office weekly.

All this access may have made An the most successful spy in history. When in 1973 the U.S. finally threw in the towel in Vietnam and fled Saigon by helicopter, An took over the *Time* bureau and filed several major stories about the Communist takeover of the country. Then, in 1976, he was identified as having been Hanoi's master spy in the south during the decades-old war and officially honored as a Hero of the People's Armed Forces, the newly united Vietnam's highest military honor. By the time of his death in 2006, An had been promoted to general.

In the ten years of what Hanoi calls the "American War," An filed 498 intelligence reports for Hanoi according to Vietnamese reports since the war's end. Sent out of Saigon clandestinely to the Viet Cong's Cu Chi tunnels complex, the reports were relayed on to Hanoi, where they were personally read by President Ho Chi Minh and General Vo Nguyen Giap. (Their strategic analysis was so well documented that President Ho is said to have once remarked, upon reading an An report, "We are now in the U.S. war room!")

Much of the story of An's life and times (and his duplicity) as related by Thomas Bass in his latest book, *The Spy Who Loved Us*, is not new. This is the second An biography written by an American in the past two years (the other being *Perfect Spy: The Incredible Double Life of Pham Xuan An*, by Larry Berman). Beyond the stories An told Bass during a series of interviews before his death, there is much material gleaned from two officially sanctioned biographies published in Vietnam in recent years, and the serialization of An's life in several Vietnamese newspapers. What is new, however, is Bass's thesis that An was not just a benign secret agent writing informed intelligence reports for the Vietnamese Communist leadership in Hanoi, but also an important military strategist and tactician who, while working in a position of trust and friendship with the Americans in Saigon, provided the Viet Cong and North Vietnamese military with targeting and fighting guidance.

Bass depicts An as a classic Vietnamese nationalist opposed to the long list of foreigners whom Vietnam has had to fight for its independence over the millennia. An came of age at World War II's end, just as the French replaced the Japanese as Vietnam's occupiers. Like so many ardent nationalists, he joined the Communist Party in the early 1950s because it was the only party able and organized to fight the French.

His early training was as a platoon commander in the Mekong Delta. But his superiors quickly realized that his wit and intellect would better help the cause if he worked as a secret agent in Saigon rather than as just another guerilla in the bush. His career as a spy began as a lowly post office censor during the time when Graham Greene was filing his reports on the French war. By the time the French were defeated at Diem Bien Phu in 1954, An had been drafted into the South Vietnamese army and, through the good offices of an influential cousin, sent to work at the South Vietnamese military headquarters. Bass makes much of how it was at that job that An had his first important contacts with the Americans whom he would come to both admire and betray. With the French defeat, and the arrival in Saigon of the legendary Col. Edward Landsdale and his CIA sidekick Lucien "Black Luigi" Conein, the United States made its first intelligence forays into Vietnamese politics. An became the Americans' local guide and protégé.

The Americans never understood just how shrewd and methodical a foe the Vietnamese were, to have trained and planted such an amazing spy among them before the United States had even committed itself to doing battle in their country.

Ironically, it was through Landsdale and Conein that An, the future master spy, began to learn the craft of spying and counterinsurgency that would eventually help lead to the U.S. failures in Vietnam. The two Americans taught him basic tradecraft and, more importantly, introduced him to the writings of Sherman Kent, the Yale professor and World War II intelligence guru who helped found the CIA, as well as other theorists of guerilla warfare.

But it was the foresight of Communist Party handlers that sealed An's formation and future cover as a spy. After the French were defeated, it became clear to Hanoi that they would also have to fight the Americans for their independence. The party scraped together some money, and sent An to the United States to study their new emerging enemy.

An enrolled in Orange Coast College in Costa Mesa, California, in 1957. As Bass relates, "An studied political science, American government, economics, sociology, psychology, Spanish and journalism." He also wrote for the college newspaper, *Barnacle*, and graduated in the spring of 1959 with an associate degree in journalism. He then spent two months working as an intern on the *Sacramento Bee*, bought a car, and drove across the United States to New York City for a second internship at the United Nations. Then, in October, trained as a journalist and knowledgeable about the United States, its people, and its ways, he flew back to Vietnam, ready for work.

The rest, one might say, is history. He worked his way to a distinguished staff position at *Time* in the usual way of war correspondency: by beginning to establish a reputation freelancing for newspapers like the *Christian Science Monitor* that

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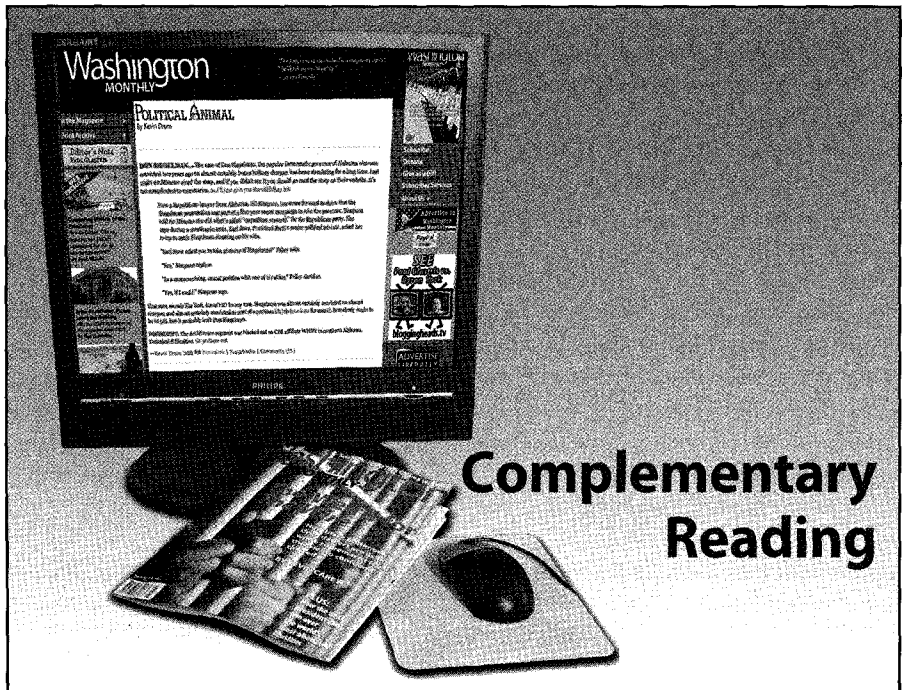

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couldn't yet afford a full staff of reporters in Vietnam, then working for the wires—United Press International, and then Reuters. He joined *Time* in 1964, just as the United States was sending its first troops into battle against the Communist forces of the north.

Most of An's former colleagues in the U.S. press corps have defended him in the years since the war ended, insisting that he never let his spying get in the way of practicing honest journalism, and that he always remained an admirer of the United States. But Bass alleges that An had a more direct, hands-on role in the war—a role that made him directly responsible for the deaths of U.S. soldiers. Bass maintains that An's reports weren't only for distant eyes in Hanoi, but frequently informed battlefield commanders on how to fight their American foes on the ground in South Vietnam. Bass says that this was the case, for example, in 1963, in the battle of Ap Bac, south of Saigon, where for the first time a major Viet Cong unit stood and fought a U.S.-advised South Vietnamese unit; the Viet Cong was able to down U.S.-supplied helicopters, using tactics recommended by An. And, more importantly, Bass writes in detail about how An drove a senior North Vietnamese intelligence official around Saigon on the eve of the 1968 Tet Offensive, personally selecting targets (such as the U.S. embassy) for attack.

This is a fascinating spy story about a fascinating and engaging man—but it is also much, much more. For An's story reveals a great deal about how and why the Vietnamese Communists ended up defeating the better-armed U.S. force. It speaks to how little American officials, military and otherwise, really knew and understood, not only their opponents in the field, but also the agents planted among them. Most devastatingly, the U.S. failed to understand how shrewd and methodical a foe the Vietnamese were, to have trained and planted such an amazing spy in their midst, well before the United States had even committed itself to war in their land. WM

Loren Jenkins is senior foreign editor at National Public Radio.

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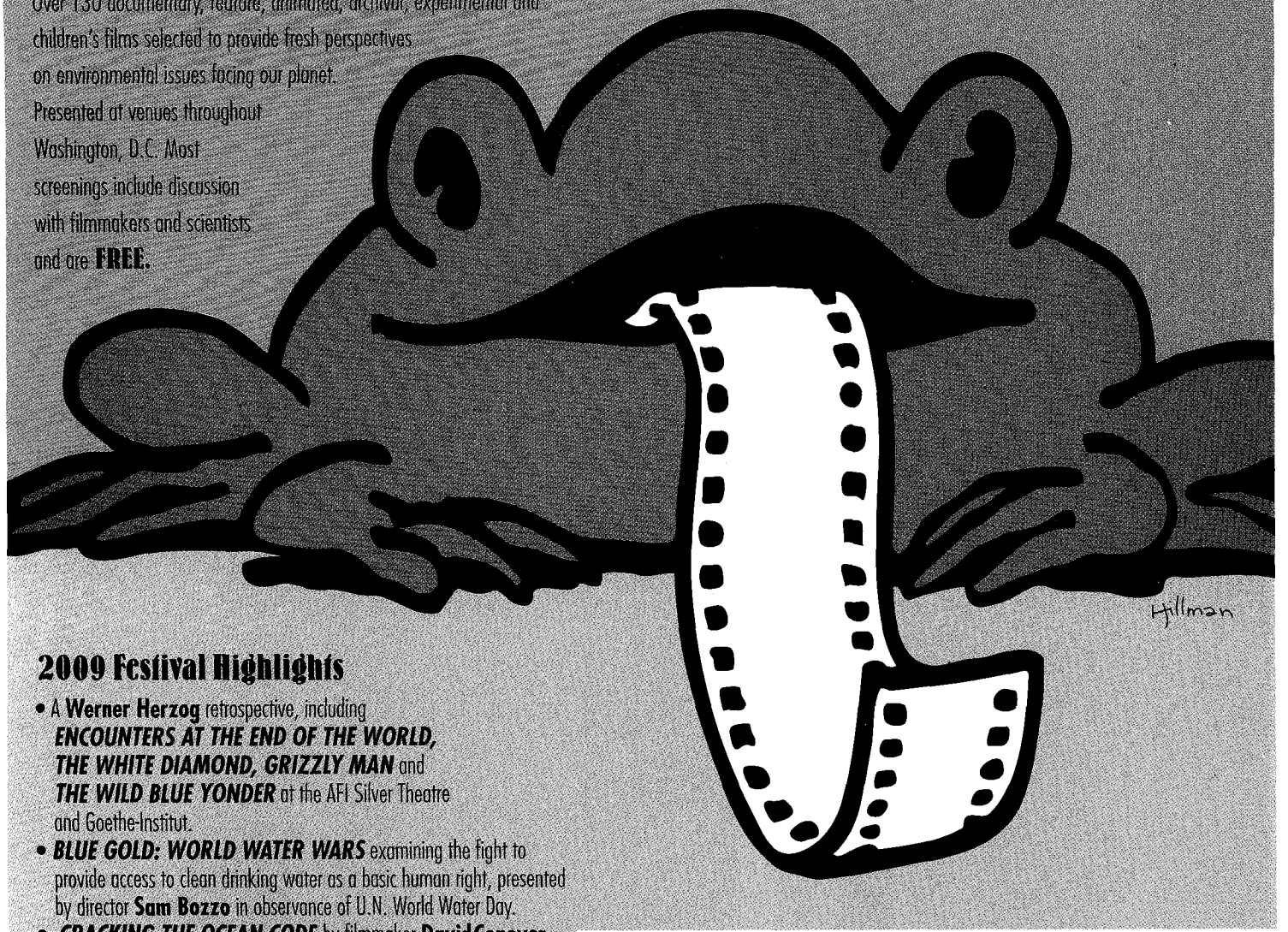

2009 Festival Highlights

- A **Werner Herzog** retrospective, including ***ENCOUNTERS AT THE END OF THE WORLD, THE WHITE DIAMOND, GRIZZLY MAN*** and ***THE WILD BLUE YONDER*** at the AFI Silver Theatre and Goethe-Institut.
- ***BLUE GOLD: WORLD WATER WARS*** examining the fight to provide access to clean drinking water as a basic human right, presented by director **Sam Bozzo** in observance of U.N. World Water Day.
- ***CRACKING THE OCEAN CODE*** by filmmaker **David Conover** followed by clips from his latest work-in-progress, ***LIFE v2.0*** about the potential uses to society of genome pioneer **Dr. J. Craig Venter's** ocean discoveries at the National Museum of Natural History.
- **Michael Tobias** presents his film ***HOTSPOTS*** following **Dr. Russell Mittermeier** as he examines critically important zones of biodiversity.
- The Washington, D.C. Premiere of ***EARTH DAYS*** chronicling the history of the environmental movement over the past four decades.
- ***AT THE EDGE OF THE WORLD*** Join the crew of the *Sea Shepherd* as they put their lives on the line to save whales from Japanese hunters posing as researchers in Antarctica.
- ***SECRETS OF THE REEF*** an immersion into the metropolis of a Pacific coral reef, at the National Museum of Natural History.
- ***NATURALLY OBSESSED: THE MAKING OF A SCIENTIST*** on what it takes to become a scientist, with filmmakers **Richard Rifkind M.D.** and **Carole Rifkind** at the American Association for the Advancement of Science.
- The IMAX film ***VAN GOGH: BRUSH WITH GENIUS*** with The Smithsonian Associates.

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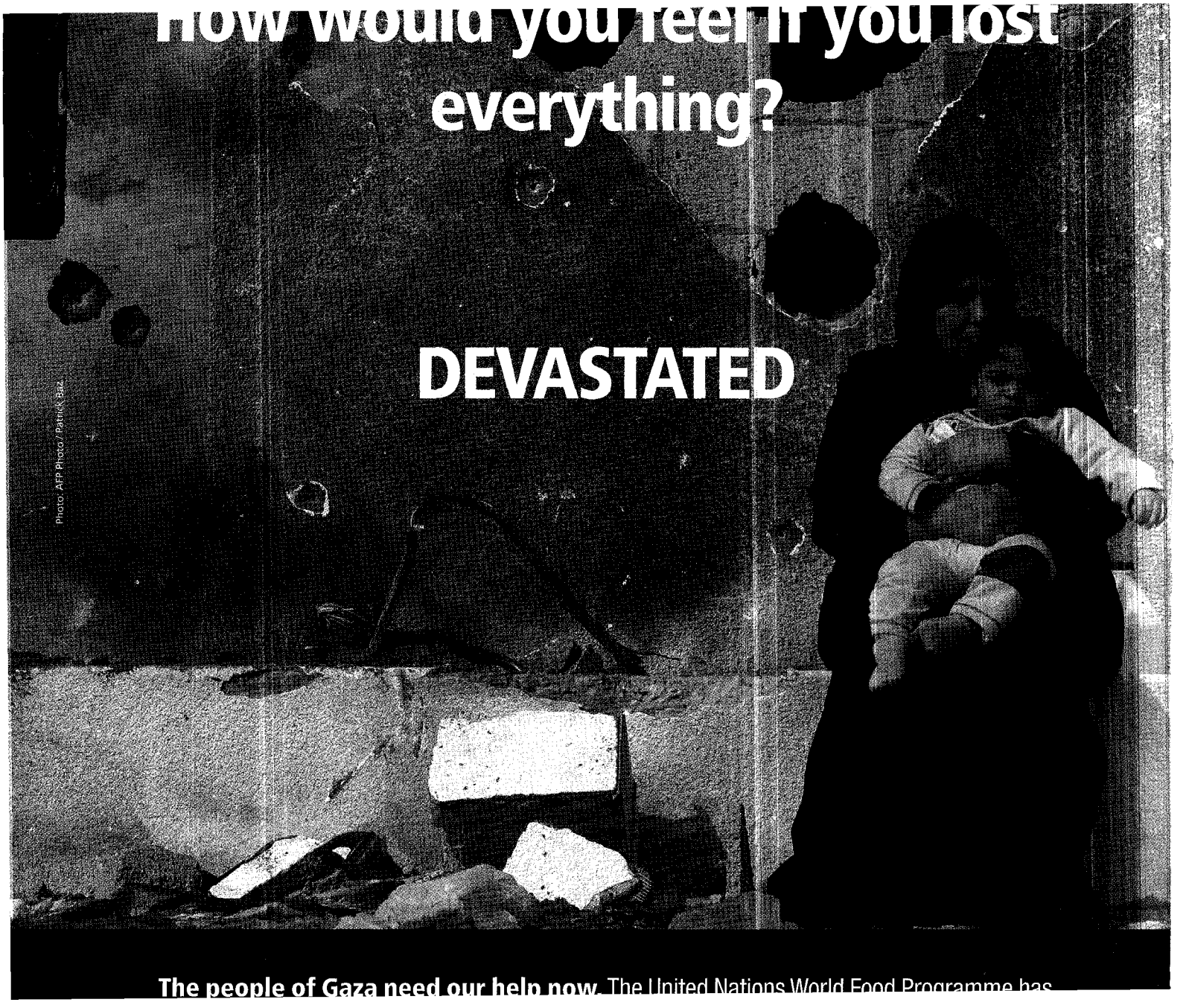

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